123
123-5-27

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

~~No. 317~~ 42

JOHN STRYKER, PLAINTIFF IN ERROR,

vs

GEORGE CRANE, ADMINISTRATOR OF EDWARD K. GOODNOW, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED SEPTEMBER 26, 1884.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 317.

JOHN STRYKER, PLAINTIFF IN ERROR,

vs.

GEORGE CRANE, ADMINISTRATOR OF EDWARD K. GOODNOW, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

INDEX.

	Original.	Print
Caption	*a*	1
Appellant's abstract of record	1	1
Petition	1	1
Exhibit B—Agreement between Goodnow and Dubuque and Sioux City Railroad Co.	5	3
Answer	6	4
Reply	10	6
Agreed facts by plaintiff	10	7
Exhibit A—Statement	14	9
Agreed facts by defendant	14	9
Record in Iowa Homestead Co. *vs.* Des Moines Navigation and Railroad Co. *et al.*	15	10
Notice	15	10
Order for injunction	16	11
Injunction	16	11
Order for removal	17	11
Affidavit for removal	18	12
Bond for removal	18	12
Petition for removal	19	13
Order dissolving injunction as to Crouse *et al.*	20	13
Petition	21	14
Amendment to bill	24	16
Part of answer of Wells	25	17

JUDD & DETWEILER, PRINTERS, WASHINGTON, APRIL 21, 1887.

	Original.	Print.
Answer	26	17
Stipulation as to answer	28	19
Stipulation as to facts	29	19
Decree	30	20
Agreement as to record, &c.	30	21
Stipulation as to facts	32	22
Order as to parties	33	
Letters, &c., from General Land Office	35	24
Record in case of Wolcott *vs.* Des Moines Navigation & Railroad Co. from circuit court U. S.	42	29
Record in case of Burr *vs.* Des Moines Navigation & Railroad Co. from circuit court U. S.	46	32
Record in case of Burr *vs.* Des Moines Navigation & Railroad Co. from Supreme Court U. S.	54	37
Record in case of Wolcott *vs.* Des Moines Navigation & Railroad Co. from Supreme Court U. S.	59	41
Deposition of John B. Thompson	71	49
W. J. Barney	73	50
Geo. Crane	74	51
Geo. J. Forest	75	52
Mason Thompson	76	52
John B. Thompson	78	54
Morris K. Jesup	80	54
J. B. Dumont	81	55
Acknowledgment of assignment, &c.	83	56
Deposition of Geo. Crane	87	59
Decree	88	60
Assignment of errors	88	60
Stipulation as to abstract	89	60
Appellee's additional abstract of record	91	61
Bill of complaint in Iowa Homestead Co. *vs.* Des Moines Navigation & Railroad Co. *et al.*	92	61
Answer of Welles in Iowa Homestead Co. *vs.* Des Moines Navigation & Railroad Co. *et al.*	109	72
Records from General Land Office	135	90
Stipulation as to abstract	138	92
Opinion	139	93
Opinion on rehearing	148	95
Judgment and decree	154	97
Motion for a supplemental decree	156	98
Supplemental decree or certificate	157	98
Writ of error	160	99
Citation	161	100
Proof of service of citation	161½	100
Bond	162	101
Clerk's certificate	164	101

a On the 29th day of April, 1882, the defendant in error (pl'ff and app'l't in the sup. court of Iowa) filed in the office of the clerk of the supreme court of Iowa an abstract, the same being in the words and figures following, to wit:

1 *Appellant's Abstract of Record.*

Supreme Court of Iowa. April Term, A. D. 1882. Dubuque.

EDWARD K. GOODNOW, App'l't, *vs.* JOHN STRYKER.

Appeal from the judgment of Webster circuit court.

George Crane, for appellant; Theodore Hawley and C. H. Gatch, for appellee.

July 26th, A. D. 1880, the plaintiff filed his petition in equity in said circuit court of Webster county, Iowa, stating his cause of action as follows:

The plaintiff, Edward K. Goodnow, complaining of the defendant, John Stryker, says—

Par. 1. That on or about the 15th day of May, 1856, the Congress of the United States, by an act approved on that date, granted and conveyed to the State of Iowa in trust to aid in the construc-

2 tion of a railroad from the city of Dubuque, on the Mississippi river, across said State to a point on the Missouri river near Sioux city, every alternate section of land designated by odd numbers for six sections in width on each side of said road, and in case there was not enough land within six sections subject to such grant to make the full six sections of land for each mile of road to be constructed, then that said State should be entitled, within fifteen miles on either side of said railroad, to as much land in alternate sections or parts of sections as should be equal to the amount of lands in odd-numbered sections within the said six-mile limits as were not subject to the operation of said grant, and that to make a full grant of six sections per mile said State became entitled to and received a proper certificate for all the odd-numbered sections and parts of sections within the said fifteen-mile limits that had not been sold to or otherwise appropriated by the United States and to which the rights of pre-emption had not attached.

Par. 2. Plaintiff further says that on or about the 14th day of July, 1856, the said State of Iowa, having duly accepted said grant and undertaken the trust therein declared, by an act approved on that date, granted all of said lands to the Dubuque & Pacific R. R. Co., a corporation duly organized under the laws of said State, on condition that said company would build the railroad contemplated in said act of Congress.

Par. 3. That afterwards, in August, 1860, the said Dubuque & Pacific Railroad Company sold, transferred, and conveyed its said railroad and all its property of every kind and nature, including all its right, title, and interest in and to the lands given or granted to it by said State of Iowa to aid in the construction of said railroad, to the Dubuque & Sioux City Railroad Company, a corporation

duly organized under the laws of Iowa, which said last conveyance was afterwards recognized, approved, and assented to by the State of Iowa, a copy of which, marked Exhibit A, is attached to this petition.

3 Plaintiff further says that said railroad companies duly constructed said railroad according to the terms and requirements of said act of Congress and prior to the year 1861 earned all the lands designated or covered by the language of the granting clause of said act of Congress and lying or being situated on the east side of the Des Moines river, in Webster county, Iowa.

Par. 4. Plaintiff further says that from 1860 to 1873 the said Dubuque & Sioux City Railroad Company, under and by virtue of said grant of lands and the construction of said railroad, honestly and in good faith believed that it was the absolute owner of and held a good and valid title during all the years of 1861 and 1862, and till the 12th day of November, 1863, to the following-described lands, to wit:

The northwest ¼ section 19, 88, 27; the northwest ¼ section 5, 88, 28; the south ½ northeast ¼ section 29, 89, 28; the east ½ southwest ¼ and northwest of northwest and the southeast ¼ section 7, 90, 28; lots 1 and 2, section 13, 90, 29, Webster county, Iowa.

All of which lands are designated by odd numbers and are within the six and fifteen mile limits of said railroad, and without which said railroad grant did not amount to six sections per mile of railroad built.

But in the year 1873 the Supreme Court of the United States, in a suit therein pending for the purpose of testing the rights and title of the Iowa Homestead Company, a grantee of the said Dubuque & Sioux City Railroad Company, to the lands aforesaid, decided finally that neither said railroad company nor said homestead company was the owner thereof, and never had any right or title thereto, since which time neither of said companies has claimed to be the owner of said lands or any part thereof.

Par. 5. That during the continuation of said belief and claim of ownership the said Dubuque & Sioux City Railroad Company

4 paid to Webster county, a municipal corporation under the laws of Iowa and within whose territorial limits said lands are situated, the taxes which were duly assessed and levied upon said lands by said county—that is to say, the amounts at the dates following and for the following years, respectively:

For 1861, paid Oct. 31st, 1866	$225 00
For 1862, paid Dec. 9th, 1863	112 50
For 1863, paid Jan. 20th, 1864	112 50

Par. 6. Plaintiff further says that the taxes so assessed and levied upon said lands became and were a valid and binding lien thereon in favor of said county, which said lien was superior or paramount to all other liens or incumbrances thereon.

Plaintiff further says that long prior to the assessment and levy of said taxes upon said lands the said defendant herein became and

was the real owner thereof, and ever since has been such owner, but of defendant's said ownership said Dubuque & Sioux City Railroad Company had no knowledge or notice at the time of constructing said road, nor till long after the payment of the taxes aforesaid.

Par. 8. Plaintiff further says that said defendant has never paid to said county the taxes aforesaid or any part thereof, and that said county has always hitherto refused and still refuses to refund to said last-named railroad company or its assigns the taxes so paid to said county by said railroad company, as hereinbefore alleged.

Par. 9. Plaintiff further says that said defendant is now and always has been a non-resident of the State of Iowa.

Par. 10. Plaintiff further says that the said Dubuque & Sioux City Railroad Company has assigned, transferred, and set over to the said plaintiff all its right, title, and claim for all of said taxes, and the right to recover or obtain the same from the said defendant, a copy of which assignment, marked Exhibit B, is hereto attached and made part of this petition.

5 Par. 11. Wherefore plaintiff asks judgment against the defendant for the sum of four hundred and fifty dollars, interest and cost of suit; that the same be made a special lien on the lands above described, and for such other and further relief in the premises as equity and good conscience may require and to this court may seem meet.

GEORGE CRANE,
Attorney for Plaintiff.

EXHIBIT B Referred to in the Petition.

This agreement witnesseth that, in consideration of the covenants and agreements hereinafter mentioned and to be kept, observed, and performed by Edward K. Goodnow, of the city and State of New York, the Dubuque & Sioux City Railroad Company, a corporation organized and existing under the laws of the State of Iowa, has assigned, transferred, conveyed, and set over, and by these presents does assign, transfer, convey, and set over, unto the said E. K. Goodnow all right, title, claim, or demand or cause of action, either in law or equity, which said railroad company may have against any person, company, or corporation on account of or by reason of its payment to Webster county, in the State of Iowa, of any taxes assessed or levied by said county upon lands situated within the territorial limits thereof, and in which said railroad company heretofore had or claimed to have an interest or title, and especially all claims, demands, and rights of action in law or equity which said railroad company may have or hold against any person, company, or corporation by virtue of said railroad company's having paid or handed over, in and for 1861, 1862, 1863, 1864, to said Webster county the taxes assessed or levied by said county upon the lands, or any part thereof, formerly claimed by said railroad company as part of the lands granted by Congress to aid in the construction of its railroad, and located within five miles of the Des Moines river, in said

6 county, but which were finally adjudged by the courts to be no part of said land grant, and does hereby authorize the said

E. K. Goodnow to enforce said claims, demands, or rights of action by suits in his own name.

In consideration whereof the said E. K. Goodnow hereby agrees to use or exercise reasonable care and diligence to enforce said claims, demands, or rights of action, and, after deducting all costs and expenses incurred in so doing, to hold the proceeds or amounts collected in trust for the use and benefit of the parties owning the same.

Signed by the respective parties hereto.

D. & S. C. R. R. CO.
E. K. GOODNOW.
DUBUQUE & SIOUX CITY
R. R. CO.,
[SEAL.] By M. K. JESUP, *Pres.*

J. B. DUMONT, *Sec.*

June 4th, 1881.—The defendant filed his answer in the words following:

Comes now the defendant, and, for answer to the petition of plaintiff herein, says—

I.

That he denies each and every allegation contained in the first, second, and third paragraphs thereof.

II.

Further answering, defendant denies each and every allegation contained in the fourth paragraph of plaintiff's petition, except as herein admitted. Defendant admits that in the year 1873 the Supreme Court of the United States, in a suit therein pending for the purpose of testing the rights of the Iowa Homestead Company, a grantee of said railroad company, to the land in said petition described, decided that neither said railroad company nor said homestead company was or ever had been owner or had any right
7 or interest in said lands, and that neither of said companies had or ever had any right, title, or interest in said lands or any part thereof.

III.

Further answering, defendant says that he denies each and every allegation contained in the fifth, sixth, seventh, eighth, ninth, and tenth paragraphs of plaintiff's petition, except as hereinafter expressly admitted.

IV.

The defendant, further answering, avers that at the time of the assessment and levy of the alleged taxes upon the lands mentioned and described in said petition for the years 1861 and 1862 said lands belonged to the United States; that the title thereto was in the United States, and that said lands were not subject to taxation

by Webster county for any purpose for said years, and that if any taxes were assessed and levied thereon for the years aforesaid the same were not a valid or binding lien upon said lands.

V.

Further answering, defendant avers that if said plaintiff or his assignor had any right or cause of action against defendant for the recovery of said taxes or any part thereof said cause of action arose or accrued to said plaintiff and his assignor more than five years before the commencement of this action, and that the same is now barred by lapse of time.

VI.

Further answering, defendant avers that the said Dubuque & Sioux City Railroad Company paid said taxes to said Webster county voluntarily and without the request, knowledge, or consent of this defendant, and with full knowledge of the facts and circumstances upon which its alleged claim of title to said lands was founded.

VII.

8 Further answering, defendant avers that the said several causes of action set up in plaintiff's petition herein accrued more than six years next before the commencement of this suit, and that at all times since the date of the payment of said taxes said defendant was and still is a citizen and resident of the State of New York, and that by the laws of the State of New York all causes of action based upon an expressed or implied promise not in writing are barred after the expiration of six years from the date when said causes of action severally accrued, and that the causes of action set out in plaintiff's petition herein are barred by lapse of time under the laws of the State of New York.

VIII.

Further answering, defendant avers that a large amount of the taxes so alleged to have been paid by said Dubuque & Sioux City Railroad Co. were illegal and void, for that the taxing officers of Webster county had no right or authority of law to levy and collect the same. A particular statement and schedule of said illegal taxes is hereunto attached and marked "A," and made a part hereof.

IX.

Further answering, defendant says that in an action wherein The Iowa Homestead Company, the grantee of the assignor of plaintiff, was plaintiff and The Des Moines Navigation and Railroad Company and this defendant were defendants, commenced in the district court of Webster county, Iowa, and finally determined in and by the Supreme Court of the United States, the said Homestead Company, prior to the date of the alleged assignment of the alleged cause of action set out in the petition herein, asserted, alleged, and main-

tained, among other things, the right to recover of the said defendants, and especially of this defendant, the taxes paid by the said Homestead Company upon the lands set out in the petition herein for certain years subsequent to 1863, and that one of the issues made by the pleadings in the same was as to the right of the said Homestead Company to recover the taxes so paid by it, and that it
9 was determined, adjudged, and found by said Supreme Court of the United States, at the December term thereof for 1872, that the said Homestead Company was not entitled to recover said taxes or any part thereof, which said determination and judgment has never been in any manner set aside, vacated, or modified, but the same remains and still is in full force and effect, and the defendant says that the assignor of plaintiff had knowledge of the pendency of said suit, and employed attorneys to prosecute the same, and that it was brought and prosecuted under the advice and direction of plaintiff's assignor, and that the plaintiff and his said assignor, The Dubuque & Sioux City Railroad Company, are barred and estopped by said judgment in the suit herein mentioned from recovering from this defendant the taxes alleged to have been paid by plaintiff's assignor and set out herein or any part thereof.

X.

Further answering, defendant alleges that during the years from 1860 to 1865, both inclusive, adverse claims of title were made to said lands, the taxes on which are in controversy herein, by the Des Moines Navigation & Railroad Company and its grantees, claiming the same under the act of Congress of August 8th, 1846, known as the Des Moines river land grant, and the Dubuque & Sioux City Railroad Company and its grantees, claiming the same under the act of Congress May 15th, 1856, known as the railroad grant, and that by reason of such adverse claims of title thereto the title was held by the General Government for the purpose of adjusting and determining with respect to said conflicting claims, and the certification thereof under said last-mentioned act was suspended until April, 1863; that the claim of title to said land by plaintiff's assignor and its grantees, therefore, did not have inception until the last-mentioned date, and said lands could not have become subject to taxation under said last-mentioned act and their certification thereunder had they been held to pass under the grant thereby made; wherefore
10 defendant says that the payment of the taxes thereon for said years by plaintiff's assignor was both voluntary and officious.

THEO. HAWLEY,
Def't's Attorney.

Dec. 21st, 1881.—Plaintiff filed his reply in the words following:

And now comes the plaintiff, and for reply to the answer of defendant, John Stryker, says that the decree or judgment set up therein as an adjudication of the rights of the plaintiff is and was wholly void for the reason that the courts of the United States had

no jurisdiction of said suit, and no legal power or authority to decide the issues or render a decree therein.

And plaintiff denies each and every allegation in said answer contained, and renews the prayer heretofore made.

GEORGE CRANE,
Attorney for Plaintiff.

On Dec. 21st, 1881, this cause coming on for final hearing, the plaintiff, to maintain the issues on his part, read in evidence the following agreed statement of facts:

For the purpose of the trial of the above-entitled suit it is hereby stipulated and agreed—

First. That the defendant, John Stryker, is now and always has been a non-resident of the State of Iowa.

Second. That the county of Webster, in the usual and formal manner, levied and assessed upon the lands mentioned in plaintiff's petition for the years named the several amounts of taxes set forth in Exhibit A. hereto attached and made part hereof, and said several assessments were made by said county to unknown owners—this is not a concession that the lands were subject to taxation for said years.

Third. That the Dubuque & Sioux City Railroad Company paid to said county the several amounts of money mentioned in said Exhibit A at the several dates therein set forth, and took from said county receipts for the sums of money so paid in the usual form as for taxes. It is understood that defendant shall have the right to have Exhibit A corrected to conform to the facts, if found in any way erroneous, and for that purpose defendant may read in evidence copies of deeds from the real estate records of Webster county.

Fourth. That said several sums of money were paid to said county without any actual demand or request by said county therefor.

Fifth. That said defendant has never paid said taxes to said county or any part thereof, and said county has always hitherto refused to refund said railroad company or to said plaintiff Goodnow the money paid as aforesaid.

Sixth. That the lands mentioned in plaintiff's petition are part of the lands purported to be conveyed by the Dubuque & Sioux City Railroad Co. to the Iowa Homestead Company by a deed of general warranty given by said company in November, A. D. 1863, and also a part of the lands in controversy in the suit of the Iowa Homestead Company *vs.* The Des Moines Navigation and Railroad Company *et al.*, in 17 Wallace, 153.

Seventh. That the reports of the cases of the Dubuque & Pacific Railroad Company *vs.* Edwin C. Litchfield, in 23 Howard, 66; The Iowa Homestead Company *vs.* The Des Moines Valley Railroad Company, in 17 Wallace, 153, and Walcott *vs.* The Des Moines Valley Railroad Company, 5 Wallace, 681, as reported therein, shall be received as evidence by the court, as far as competent and material to any of the issues herein.

Eighth. That the printed transcript of the record in the Supreme Court of the United States in said case of The Iowa Homestead Company *vs.* The Des Moines Valley Railroad Company may be received as evidence and considered by the court with like effect as the
12 original might be, so far as material to any of the issues herein, either party having the right to offer in evidence such portions as he may deem relevant and material.

Ninth. That the costs of Exhibit A shall be taxed as part of the costs of this suit.

Tenth. That all the lands described in the petition lie within five miles of the Des Moines river, in the alternate odd-numbered sections, above the Raccoon Forks of said river, and were, prior to May 3d, 1858, certified and approved to the State of Iowa, under the act of Congress of August 8th, 1846, entitled "An act granting certain lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines river in said Territory."

Eleventh. That on the 3d day of May, 1858, pursuant to a sale thereof previously made and an act of the General Assembly of Iowa, passed March 22, 1858, entitled "An act disposing of the grant of land made by an act of Congress granting land to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines river," and a joint resolution of said General Assembly, adopted on the day and year last aforesaid, entitled "Joint resolution containing propositions for a settlement with the Des Moines Navigation & Railroad Company," the State of Iowa, by its deed or patent, granted and conveyed all of said lands to the Des Moines Navigation & Railroad Comp'y, a corporation duly organized, created, and established under the laws of the State of Iowa, and subsequently thereto and prior to the year 1860 said company executed a deed of conveyance for said lands described in the petition herein to the said John Stryker.

Twelfth. That said John Stryker and his grantors, prior to March 2, 1861, claimed title in fee-simple to all of said lands, under said act of Congress of August 8, 1846, and the certification, approval, and conveyance aforesaid thereunder, and constantly, since March 2, 1861, has claimed title to said lands under the joint resolution of Congress of that date.

Said John Stryker was a *bona fide* purchaser of said lands
13 under the State of Iowa as contemplated under the joint resolution of Congress approved March 2, 1861. Any documents contained in the records of the case of Dumont *vs.* The Des Moines Valley Railroad Company may be read in evidence the same as though original, duly certified, so far as otherwise competent and relevant.

Thirteenth. That prior to the year A. D. 1861, the Dubuque & Pacific Railroad Company and the Dubuque & Sioux City Railroad Company had completed and were operating, in accordance with the terms of the grant, seventy miles of railroad, commencing at the city of Dubuque, Iowa, and extending west the distance aforesaid; that said railroad was so built and operated in pursuance of and in accordance with the act of Congress approved May 15, 1856, donat-

ing lands to the State of Iowa to aid in the construction of said railroad from Dubuque to the Missouri river, near Sioux City, in Iowa, and of the act of the Legislature of Iowa approved July 14, 1856, granting said lands to said Dubuque & Pacific Railroad Company, and that the construction of said part of said railroad was duly and properly certified to by the Governor of the State of Iowa before the date aforesaid.

That all the lands falling within the limits of said grant of May 15, 1856, and being east of range thirty-one, in said State of Iowa, and subject to the terms of said grant, including all the lands within five miles of the Des Moines river, in odd-numbered sections, did not amount to more than 226,559 acres. This last amount includes the fifty thousand acres of land in the odd-numbered sections within five miles of the Des Moines river, which the courts held were no part of the land grant of May 15, 1856.

The defendant shall have the right to show that said taxes were paid by the Iowa Homestead Company, and to object to the competency or materiality of any of the facts herein stated.

THEO. HAWLEY,
Defendant's Att'y.
GEORGE CRANE,
Plaintiff's Att'y.

14 EXHIBIT A Referred to in said Agreed Facts.

For the year 1861, paid October 31st, 1866, $235.67.
For the year 1862, paid December 9th, 1863, $93.07.
For the year 1863, paid Jan. 20, 1864, $66.28.

Defendant then read in evidence the following agreement:

Agreed Statement.

For the purposes of the trial of the above-entitled causes it is hereby stipulated and agreed—

First. That the defendant, John Stryker, is now and has been since the year 1860 a citizen and resident of the State of New York.

Second. That the statute and laws of the State of New York now in force, and which have been in force since 1860, provide that all causes of action based on or arising out of an express or implied promise not in writing are barred after the expiration of six years from the date when said causes of action severally accrued.

Third. That on the hearing and trial of these causes the defendant may offer and read in evidence from the journal of the proceedings of the board of supervisors of Webster county and the tax-books of said county such portions thereof as he may deem relevant and material, subject to all objections by plaintiff as to their relevancy, materiality, or competency.

Fourth. That the defendant, through his agent, Benj. Grayson, during the years mentioned in the petitions herein, applied yearly to the treasurer of Webster county, Iowa, to pay the taxes levied

and assessed upon the lands in said petition described, and found those mentioned and described in plaintiff's Exhibit "A" marked paid upon the tax-lists for those years, respectively.

It is understood that by signing this agreement plaintiff does not waive his right to object to the introduction of the fore-
15 going facts or any part thereof on the ground of irrelevancy, incompetency, or that it is too late, the cause having been tried in the supreme court of Iowa.

GEORGE CRANE,
Attorney for Plaintiff.
THEO. HAWLEY,
Defendant's Attorney.

The plaintiff then read in evidence from the printed transcript of the record in the Supreme Court of the United States, in the case of The Iowa Homestead Company against The Des Moines Valley Railroad Company, referred to in said agreed statement of facts, the following portions thereof:

In the District Court of Webster County, Iowa.

IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION & R. R. CO., EDWIN C. LITCHFIELD, Electus B. Litchfield, Samuel G. Wolcott, & Others, and Roswell S. Burrows.

To said defendants above named:

You are hereby notified that there is now on file in the office of the clerk of the district court of Webster county, Iowa, the petition of plaintiff aforesaid, claiming of you that the said Iowa Homestead Company is in possession and has the legal title to certain lands in the alternate sections within five miles of Des Moines river, above the Raccoon Forks; that you claim in some way an adverse title thereto; that you be enjoined from prosecuting actions at law or pre-emptions to said lands to quiet the plaintiff's title and for other relief. You are also notified that unless you appear thereto and defend before noon of the second day of the term of the said district court of Webster county, to be held on the 12th day of October, 1868, a default will be entered against you and judgment rendered thereon.

IOWA HOMESTEAD COMPANY,
GRANT & SMITH, *Att'ys.*

16 DES MOINES, IOWA, 10*th October*, 1868.

Accepted service for the defendants, The Des Moines Navigation & Railroad Company and Edwin C. Litchfield and Electus B. Litchfield.

J. BROWN,
Agent for Defendants.

At chambers, city of Davenport, Scott county, Iowa.

Ordered, That a temporary writ of injunction do issue, as prayed, on plaintiff filing bond in penal sum of $500, conditioned as required by law, and the sureties to be approved by the clerk of Webster county, Iowa, district court.

Dated 1st day of October term, A. D. 1868.

JOHN F. DILLON,
Chief Justice Supreme Court Iowa.

THE STATE OF IOWA
vs.
THE DES MOINES NAVIGATION & RAILROAD COMPANY, SAMUEL G. Wolcott, Wm. B. Wells, Roswell S. Burrows, Edwin C. Litchfield, Wm. McAlpine, Richard B. Chapman, Albert Tracy, Harriet Tracy, Electus B. Litchfield, Edwin Wade, John Stryker, The Des Moines Valley Railroad Company, *et al.*

Whereas the Iowa Homestead Company has filed in our district court for the county of Webster a petition claiming that the said Homestead Company, a corporation created by the laws of Iowa, has the legal title to the lands (which are mentioned and described in plaintiff's petition), and that you or some of you have brought and intend to bring certain actions at law against persons in possession of said lands to divert the title of said Iowa Homestead Company, and that you or some of you are about to prove up and claim pre-emptions on some of the lands which are named (in said petition), and has prayed in said bill to grant them title to said lands:

Now, these are to command you and each of you, your agents, attorneys, servants, that you do wholly refrain from prose-
17 cuting said actions at law or either of them, and that you wholly refrain from further applying for or proving up pre-emptions on any of said lands until the further order of our said district court for the county of Webster; and you will disobey this writ at your peril.

Witness, and in testimony, I, W. Lumpkin, clerk of the district court, have hereunto subscribed my name and affixed the seal of said court, at office, in Fort Dodge, this sixth day of October, A. D. 1868.

W. LUMPKIN,
Clerk District Court.

Accepted service of the within writ for the defendants, The Des Moines Navigation & Railroad Company, Edwin C. Litchfield, and Electus B. Litchfield.

J. BROWN,
Agent of said Defendants.

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION & R. R. CO. *et al.*

In this cause come the defendants, Litchfield and John Stryker, and file their affidavit, bond, and petition for the transfer of this

cause to the circuit court of the United States for the district of Iowa, under certain acts of Congress of the United States, and the court being satisfied that the said affidavit and petition are sufficient under the law, and said bond being approved by the court, it is ordered that this cause be transferred to said circuit court of the United States for the district of Iowa, as to said defendants *in re*, and the clerk of this court is ordered to make the proper papers for said transfer.

18 STATE OF IOWA, } ss:
Webster County, }

THE IOWA HOMESTEAD COMPANY

vs.

EDWIN C. LITCHFIELD, ELECTUS B. LITCHFIELD, and JOHN STRYKER, Impleaded with Roswell Burrows, The Des Moines Navigation & Railroad Co., and Others.

I, John Brown, of Des Moines, in the county of Polk, in said State, being duly sworn, do depose and say that I am the agent of the defendants, Litchfield and Stryker, in the above-entitled action; that the same is now pending in the district court of Webster county, Iowa; that the said defendants, for whom I am agent as aforesaid, are citizens of the State of New York, and that the plaintiff is a citizen of the State of Iowa; that the matter in controversy and dispute between this plaintiff and each and every of the defendants exceeds the sum of five hundred dollars, exclusive of costs; that I have reason to believe and do believe that, from prejudice and local influence, said defendants will not be able to obtain justice in the State courts of Iowa, in which this action is pending and untried.

JOHN BROWN.

Subscribed and sworn to by John Brown before me this 15th day of May, A. D. 1869.

GEORGE B. CORKHILL, *Clerk.*

Know all men by these presents that we, Edwin C. Litchfield and Electus B. Litchfield, and John Stryker, as principals, and John Brown, as surety, are hereby held and firmly bound unto the Iowa Homestead Company in the penal sum of one hundred dollars, lawful money of the United States; to the payment of which, well and truly to be made, we bind ourselves, jointly and severally, by these presents.

The condition of this is such that if the said Edwin C. Litchfield, Electus B. Litchfield, and John Stryker shall enter or cause
19 to be entered in the circuit court of the United States, to be held in and for the district of Iowa, copies of all process pleadings, depositions, testimony, and other proceedings in a certain suit or action now pending in the district court of the county of Webster and State of Iowa, in which the Iowa Homestead Company is plaintiff and said Edwin C. Litchfield, Electus B. Litchfield, and John Stryker, impleaded, &c., are defendants, and shall do such

other appropriate acts as by the act of Congress approved July 26th, 1866, entitled An act for the removal of causes in certain cases from State courts, are required to be done upon the removal of a suit into the United States courts, then this obligation to be void; otherwise, of force.

EDWARD C. LITCHFIELD.
ELECTUS B. LITCHFIELD.
JOHN STRYKER.
JOHN BROWN.

Petition for Removal.

To the district court of Webster county, Iowa:

The petition of Edwin C. Litchfield, Electus B. Litchfield, and John Stryker, defendants in the above-entitled action, respectfully shows that they are citizens of the State of New York; that this action is now pending in the district court of Webster county, Iowa; that the matter in dispute herein exceeds the sum of five hundred dollars, exclusive of costs.

And your petitioners further show that they have in this court their affidavit as required by the act of Congress approved Mar. 2d, 1867, entitled "An act to amend an act entitled An act for the removal of causes in certain cases from the State court, approved July 27, 1866."

And your petitioners file this petition praying for the removal of this suit into the next circuit court of the United States to be held in and for the district of Iowa, and they herewith offer the surety required by the said above-entitled act.

D. O. FINCH AND J. M. ELLWOOD,
Att'ys for Def'ts Litchfield and Stryker.

This affidavit, bond, and petition are filed in place of the original filed in the district court of Webster county 13th October, 1868, the same appearing to be lost and not returned.

GRANT,
For Plaintiff.
J. M. ELLWOOD,
For Litchfield and Stryker.

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION & R. R. CO. *et al.*

OCT. 16, 1868.

And now, on this day, comes the defendants, Crouse, McDermott, and Cotter, by their attorney, G. Parsons, and file a motion to dissolve the injunction, which, coming on to be heard, and the court being fully advised in the premises, said motion is sustained as to them. Whereupon this cause is ordered transferred to the circuit court of the United States as to other defendants.

Webster District Court.

OCT. 13, 1868.

In this cause the defendants, Litchfield and Stryker, come and file their affidavits, bond, and petition for the transfer of this cause to the circuit court of the United States for the district of Iowa under certain acts of Congress of the United States, and, the court being satisfied that said affidavits and petition are sufficient under said law, and said bond being approved by the court, it is ordered that this cause, as to the said defendants, be transferred to said circuit court of the United States for the district of Iowa, and the clerk is ordered to make the proper papers for said transfer.

Mr. Clerk, please make the above entry in this cause, and the further entry that as to other defendants the cause is continued by agreement.

GRANT,
For Plaintiff.

21 The foregoing original notice, acceptance of service, order of Dillon, justice, writ of injunction, and the acceptance of service thereof were read in evidence by plaintiff; also the affidavit of James Grant as to the truth of the matters contained in the petition or bill of complaint in said Homestead suit, which was in the words following:

STATE OF IOWA, *Scott County:*

I, James Grant, being duly sworn, depose on oath that I am one of the attorneys for the plaintiff; that the facts stated in the foregoing petition are all of them of record, except the allegations of the interest and intent of the parties in the suit of Wolcott *vs.* The Des Moines Navigation Company. I have examined the records referred to in the bill, and have been informed as to the facts about the Wolcott suit by parties who appeared to know them, and I believe the allegation of the bill to be true.

JAMES GRANT.

Sworn to and subscribed before me this 1st day of October, 1868.

JOHN F. DILLON,
Judge Supreme Court Iowa.

STATE OF IOWA, *Webster Co.:*

District Court.

THE IOWA HOMESTEAD COMPANY

vs.

THE DES MOINES NAVIGATION & R. R. CO. *et al.*

"The petition of the Iowa Homestead Company shows—

"That said company is a corporation duly created by the laws and a citizen of the State of Iowa for the purpose of buying and selling lands in said State; that said plaintiff, by deed of purchase bearing date the 12th of November, 1863, acquired by and through the

Dubuque & Sioux City Railroad Company, all the right of said
22 company, the Dubuque & Pacific Railroad Company, and the State of Iowa to about fifty thousand acres of land lying on the east side of the Des Moines river in Webster and Humboldt counties, Iowa, being the odd sections of land within the limits of the Dubuque and Pacific railroad grant of 1856, and the Des Moines river grant of 1856.

It is admitted that the above-described fifty thousand acres of land include and embrace all the lands mentioned and described in the petition of the said E. K. Goodnow in the suit now before this court.

"And by said deeds and certificates the plaintiff acquired a title to almost twenty thousand acres of land, in odd sections, within said grants in Webster and Hamilton counties, west of said Des Moines river, a list of which is hereto annexed and made part of this bill. Of these lands the fifty thousand acres lying east of the Des Moines river and claimed by the Des Moines Navigation & Railroad Company, a corporation created by the laws of Iowa, and its assigns, and some title or claim to twenty thousand acres of land on the west side of the river is, or has been, made by the Des Moines Valley Railroad Company, a corporation created by and a citizen of the State of Iowa. * * *

"On the 9th of June, 1854, the State made a contract with the Des Moines Navigation & Railroad Company, a corporation created by the laws of Iowa, to improve the navigation of the river, and to convey to said corporation all the remaining lands belonging to the State under the act of 1846. * * *

"After the settlement of the State with the Des Moines Navigation Company in 1858 the said navigation company conveyed certain parcels of the lands now claimed by the plaintiff to the following persons, among others: Samuel G. Wolcott, Wm. B. Wells, Roswell Burrows, Edwin C. Litchfield, W. J. McAlpine, Richard B. Chapman, Albert Tracy, Francis A. Tracy, Harriet Tracy, Electus B. Litchfield, Edward Wade, and John Stryker. * * *

23 "The said plaintiffs have been in possession of the lands claimed by them, themselves or their vendees, in contract since 1861. They have paid the taxes thereon to the State of Iowa since, in all amounting to eighty thousand dollars, and if their title has failed they are entitled to have their taxes refunded since 1861 by the holder of the legal title, who has not paid them. * * *

"The plaintiff says he has no adequate remedy for the grievances complained of except in a court of equity. He makes the Des Moines Navigation & Railroad Company, Samuel G. Wolcott, Wm. B. Wells, Roswell Burrows, Edwin C. Litchfield, Wm. J. McAlpine, Richard B. Chapman, Albert H. Tracey, Francis W. Tracy, Harriet Tracy, Electus B. Litchfield, Edward Wade, John Stryker, the Des Moines Valley Railroad Company, Thomas Cotter, Jacob Crouse, John B. McDermott parties defendant to this suit, and prays for a writ of subpœna against them.

"The plaintiff prays that said parties may be enjoined from prosecuting said actions or any other actions at law in relation to the

title or possession of any of said lands until the final hearing of the bill; that the injunction be made perpetual; that said defendants Cotter, Crouse, and McDermott be enjoined perpetually from prosecuting any pre emption to any of said lands; that the conflicting acts of the Secretary of the Interior and judicial decisions may be finally interpreted; that the plaintiffs may be quieted in their title and possession to said lands on both sides of the river, or if the plaintiff's title to said lands is not the better title, and his title to the said lands is the title conveyed by the State, and failed under the right interpretation of the acts of 1846, 1856, and 1862, that his title to an equal number of acres in lieu thereof be decreed and established; that an account be taken of said indemnity lands, and the Des Moines Valley Railroad Company be decreed to make partition thereof and set apart and convey or relinquish to the plaintiff such lands as the plaintiff may be entitled to under said act of July 12th, 1862.

24 "The State of Iowa, being acting trustee to do justice in the premises and to convey to such party as may be established the true beneficiaries under said act, that in the event of a decree that the plaintiff's present title or any part of it has failed, that the said Des Moines Navigation & Railroad Company and its assigns may be decreed to repay to the plaintiff all the taxes which he has paid on said lands and interest thereon." And that said Des Moines Valley Railroad Company be decreed to release to the plaintiff all claims to the indemnity lands set apart to the plaintiff, and for such other relief as the nature of the plaintiff's case may require.

GRANT & SMITH,
Attorneys for Plaintiff.

Comes the plaintiff, October 23, 1870, and by leave of court and consent of counsel, files the following amendment to this bill, to wit

Circuit Court of the United States, District of Iowa.

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION & RAILROAD COMPANY *et al.*

The plaintiff, by leave of court and agreement of counsel, amends his description of the property in dispute by adding, after the first clause of the bill, the following words:

That said lands in dispute and claimed by the Des Moines Navigation & Railroad Company and its assignees are the odd sections in townships 86, 87, and 88, range 27, 28, 29, and 30 west, which lie south of the second correction line, within five miles of Des Moines river, and townships 89, 90, 91, and 92, ranges 28 and 29, east of the Des Moines river, within five miles of the east branch thereof.

The lands to which the Des Moines Valley Railroad Company makes some claim are the odd-numbered sections in townships
25 89 and 90, ranges 28 and 29, which lie west of the Des Moines river and within five miles thereof.

GRANT & SMITH.

This amendment, being made to correct and simplify a description of the lands in controversy, is conceded to be true without formal answer.

Part of the Answer of Wm. B. Wells, Defendant in said Suit.

United States Court, District of Iowa.

THE IOWA HOMESTEAD COMPANY, Complainant,

vs.

THE DES MOINES NAVIGATION & RAILROAD COMPANY, SAMUEL G. Wolcott, Wm. B. Wells, Roswell S. Burrows, Edwin C. Litchfield, Wm. J. McAlpine, Richard B. Chapman, Albert H. Tracy, Francis W. Tracy, Harriet Tracy, Electus Litchfield, Edward Wade, John Stryker, and Others, Defendants.

The several answer of the defendant, Wm. B. Wells, to the bill of complaint of the Iowa Homestead Company, complainant.

* * * And this defendant, further answering, denies that the title of the complainant to the lands claimed by these defendants and by the Des Moines Navigation & Railroad Company and its grantees is superior and paramount to that of the said company and its grantees, and he expressly denies that the plaintiff, by reason of the matters in said complainant's bill of complaint contained as against the said Des Moines Navigation & Railroad Company and its grantees, has any title whatever to the said lands claimed by said company and its several grantees, respectively.

And this defendant, further answering, says that, as to whether or not the said complainant and its vendees have been in
26 possession of and paid taxes on the lands claimed by them since 1861, to the amount of $80,000, this defendant is ignorant and uninformed save by the said complainant's bill of complaint, but he expressly avers that the possession of the said lands by the said complainant and its vendees since 1861 is and has been unauthorized and wrongful, and that the said complainant sho'd be required to account for the use and rents and profits thereof to the proper owners, respectively, during the time they have been in such possession, and he also expressly alleges and avers that all taxes whatever paid by said complainant have been paid by complainant voluntarily, with a knowledge of all the facts, and that the complainant is not entitled to have the same or any part thereof refunded.

And on this day, to wit, the 2nd day of August, 1869, come the defendants, The Des Moines Navigation & R. R. Company, Sam'l G. Wolcott, E. C. Litchfield, Wm. J. McAlpine. Richard B. Chapman, Electus B. Litchfield, Edward Wade, and John Stryker, by Ellwood, solicitor, and file in said cause the following answer to complainant's bill of complaint, to wit:

United States Circuit Court, District of Iowa. In Equity.

THE IOWA HOMESTEAD COMPANY, Complainant,

vs.

THE DES MOINES NAVIGATION & RAILROAD COMPANY, SAMUEL G. Wolcott, Edwin C. Litchfield, Electus B. Litchfield, William J. McAlpine, Richard B. Chapman, Edward Wade, and John Stryker, Defendants to the Bill of Complaint of the Iowa Homestead Company, Complainant.

These defendants, The Des Moines Navigation & Railroad Co., Samuel G. Wolcott, Edwin C. Litchfield, Electus B. Litchfield, Wm. J. Alpine, Richard B. Chapman, Edward Wade, and John Stryker, now and at all times hereafter, saving and reserving to themselves all manner of benefit and advantage of exception to the
27 many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or to so much and such parts and portions thereof as these defendants are advised is material for them to make answer unto, answer and say that the foregoing and annexed answer of Wm. B. Wells herein, save as herein otherwise stated and set forth, truly and correctly sets forth all the facts and contains all the averments and allegations relied upon by these defendants and each and every one of them as a defense to the said complainant's bill of complaint; that the said answer of said Wells and the admissions and denials and affirmative allegations therein contained are true to the best knowledge and belief of these defendants, and that these defendants adopt the said answer of the said Wells as their answer to the complainant's said bill of complaint, save and except as herein otherwise stated and set forth.

And these defendants, further answering, allege and aver that all the lands in and by the complainant's bill claimed to be in dispute by and between the complainant and these defendants were, by the State of Iowa, duly granted and conveyed to the said Des Moines Navigation & Railroad Company *by the State of Iowa*, as in the said answer of the said Wm. B. Wells fully stated and set forth; and that subsequent to such conveyance by the State to said Des Moines Navigation & Railroad Company the said company bargained, sold, granted, and conveyed to these defendants, respectively, separate and distinct tracts and parcels of said lands claimed by complainant, as will more fully appear by reference to the deeds or conveyances executed by said company to these defendants, respectively, and to which several deeds, for greater certainty, these defendants pray leave to refer, and that each and every of these defendants is a *bona fide* purchaser under the State of Iowa of the tract or tracts, respectively, conveyed to him by said company, and that he has full, complete, and indefeasible title thereto.

And these defendants deny that the said complainant is
28 entitled to the relief claimed in his bill of complaint or any part or portion thereof, and aver and insist that by reason of the matters above and in the said answer of Wm. B. Wells, adopted

and made a part hereof, contained the title of these defendants to the lands in dispute claimed by them, respectively, is perfect and absolute; all which matters and things these defendants are ready to aver, maintain, and prove as this honorable court shall direct, and they pray that their respective titles to the tracts claimed by them, respectively, may be confirmed and approved and declared valid, and that they be hence dismissed with their costs herein most wrongfully sustained.

FINCH & RIVERS AND
J. M. ELLWOOD,
Att'ys for Def'ts Above Named.

And on the 13th day of May, A. D. 1870, there was filed in said cause the following stipulation of parties:

United States Circuit Court, District of Iowa.

THE IOWA HOMESTEAD COMPANY

vs.

THE DES MOINES NAVIGATION AND RAILROAD COMPANY, SAMUEL G. Wolcott, William B. Wells, Roswell S. Burrows, Edwin C. Litchfield, William J. McAlpine, Richard B. Chapman, Albert H. Tracy, Harriet Tracy, Electus B. Litchfield, Edward Wade, John Stryker, and Others.

It is stipulated and agreed that the joint and several answers of the defendants, Albert H. Tracy, Francis Tracy, and Harriet Tracy, verified by Albert H. Tracy; the several answers of the defendant, Wm. B. Wells, sworn to by said Wells, and the joint and several answers of the defendants, Samuel G. Wolcott, Edwin C. Litchfield, Wm. J. McAlpine, Richard B. Chapman, Electus B. Litchfild, Edward Wade, John Stryker, and the Des Moines Navigation & Railroad Company, sworn to by Electus B. Litchfield and Nathan
29 J. Higbee, be deemed and taken as the answer of the several defendants herein, and that all previous answers of the said defendants verified by their solicitor and filed herein be withdrawn from file.

To the several preceding answers the plaintiff filed a formal replication, putting in issue the several averments therein contained.

Stipulations Between the Parties.

In the Circuit Court of the United States.

IOWA HOMESTEAD COMPANY

vs.

THE DES MOINES VALLEY RAILROAD COMPANY *et al.*

It is agreed that the only questions submitted on this hearing are—

1. In which of the parties is the paramount title to the lands in controversy?

2. If the title shall be adjudged to be in the defendant, The Des Moines Navigation & Railroad Company, is the plaintiff entitled to be reimbursed the taxes which it has paid on the lands?

The amount of taxes paid is admitted to be $2,000. If the court shall find that the plaintiff is entitled to be so reimbursed, the question of amount to be reimbursed shall be referred to a master, and the defendants shall have the right to show any counter-claims or matters which should be considered as reducing the amount to be reimbursed.

It is admitted that D. W. Kilborne was a director in the Des Moines Valley Railroad Company from 1862 to 1867. It is admitted that the Dubuque & Sioux City railroad was completed to Sioux City July 4th, 1870.

GRANT & SMITH,
Attorneys for Plaintiffs.
WITHROW & WRIGHT,
For D. V. R. R. Co.
S. L. STRONG AND
WITHROW & WRIGHT,
For D. M. V. R. R.
C. C. NOURSE,
For R. S. Burrows.

30 And afterwards, to wit, on the 31st day of May, 1871, the following decree was rendered in said cause by said circuit court:

THE IOWA HOMESTEAD COMPANY

vs.

THE DES MOINES NAVIGATION & R. R. CO. *et al.*

This cause came on to be heard at the May term, 1871, of said court, Grant & Smith for the plaintiff, and Ellwood, Nourse & Withrow for the Des Moines Navigation & Railroad Company and purchasers, and Withrow & Strong for the Des Moines Valley Railroad Company. And the cause is heard upon the bill and amendments, answers, replications, agreements of counsel, exhibits, and depositions.

And thereupon it was ordered, adjudged, and decreed that the plaintiff's bill as to the lands in townships 86, 87, and 88, ranges 27, 28, 29, and 30, east and west of the Des Moines river and south of the second correction line, and townships 89, 90, 91, and 92, ranges 28 and 29, east of the Des Moines river, and the bill for relief for indemnity lands in lieu thereof, be dismissed.

And the bill for relief as to the lands in townships 89 and 90 north, range 28 and 29 west, on the west side of Des Moines river, be dismissed without prejudice, and that the plaintiffs pay the costs.

The following agreement was filed in said cause by the parties on the 20th day of October, A. D. 1871:

THE IOWA HOMESTEAD COMPANY

vs.

THE DES MOINES NAVIGATION AND RAILROAD COMPANY & Others.

It is agreed between the counsel for the complainants and defendants, who have appeared and answered, that the foregoing case was tried in the circuit court upon the bill, amendments, answers, replications, exhibits, and depositions offered by plaintiff and defendant at and in the foregoing record, which the parties agree to examine and correct when printed.

31 It is further agreed that the plaintiffs have all the title to the property in dispute which lawfully belonged to the Dubuque & Pacific Railroad Company or Dubuque & Sioux City Railroad Company, its assignee.

It is also agreed that either party should be authorized to read, either in the court below or in the supreme court, all acts, resolutions, and memorials, journals, or public documents of Congress or the State of Iowa which relate to the matter in controversy without offering them formally to the court, and use them in argument by proper reference.

It was also agreed that if either has omitted from their record any public record of the State or United States which relates to the matter in controversy the same may be read and considered in the appeal court by furnishing the adverse party with notice thereof thirty days before argument, the object of both parties being to obtain a final adjudication of the questions made in the issues between the parties, or all the facts which belong to the same. And it is further stipulated that the defendants, Samuel G. Wolcott, Edwin C. Litchfield, Wm. J. McAlpine, Richard B. Chapman, Electus B. Litchfield, Edward Wade, and John Stryker, each and every of whom are citizens of New York, and the Des Moines Navigation & Railroad Company, duly appeared in this court and filed their joint and several answers to complainant's bill, duly verified; that the said answers are not now found with the papers in this cause; that the said answers of said defendants were substantially in all respects like those of the defendants, Wm. B. Wells and Albert Tracy, on file herein and duly verified by them, respectively, except such changes, variations, and alterations as were necessary to present the interests held by said defendants, respectively, in the land in controversy in this action.

And it is further stipulated and agreed that the said answer of defendant, William B. Wells, verified by him, with the neces-
32 sary changes, alterations, and variations, to show and present the proper and respective interest of defendants, Samuel G. Wolcott, Edwin C. Litchfield, Edward Wade, and John Stryker and Des Moines Navigation and Railroad Company, shall be taken,

treated, and deemed the answer of said last-named defendants herein.

J. M. ELLWOOD,
For all the Defendants Represented.
WITHROW & WRIGHT,
For all the Defendants they Represent, Except the Des Moines Valley Railroad Company.
GRANT & SMITH,
For Plaintiff.

In the Supreme Court of the United States.

THE IOWA HOMESTEAD COMPANY

vs.

THE DES MOINES NAVIGATION & RAILROAD COMPANY *et al.*

To prevent unnecessary incumbrance of the record in this cause it is stipulated that the evidence in the court below established the following facts:

That on the 7th day of April, 1863, there was certified to the State to aid in the construction of the Dubuque & Pacific railroad lands as follows:

	56,473.32 acres.	
	21,061.91 "	
	1,382.42 "	
		78,917.25
And the 13th December, 1864		159.60

That the land certified on the 27th day of December, 1858, embraced none of the lands in dispute in this controversy, and no lands lying in odd-numbered sections within five miles of the Des Moines river.

That the lists made on the 7th of April, 1863, and the 13th of December, 1864, embraced the lands in dispute, except in-
33 demnity lands, and all were in odd-numbered sections within five miles of the Des Moines river. * * *

(Signed) WITHROW & WRIGHT,
For the Des Moines Navigation & Railroad Company, and the Des Moines Valley Railroad Company.
GRANT & SMITH,
For Plaintiff.

And on this day, to wit, the 13th day of May, in the May term, A. D. 1870, of said court, in the record of the proceedings thereof in said entitled cause there appears the following entry, to wit:

THE IOWA HOMESTEAD COMPANY, Complainant,

vs.

THE DES MOINES NAVIGATION & RAILROAD COMPANY, SAMUEL G. Wolcott, Wm. B. Wells, Roswell S. Burrows, Edwin C. Litchfield, Wm. J. McAlpine, Richard B. Chapman, Albert H. Tracy, Francis W. Tracy, Harriet Tracy, Electus B. Litchfield, Edward Wade, John Stryker, *et al.*, Defendants.

This action was commenced in the district court of Webster county, Iowa, at the October term of said district court. The defendants, Edwin C. Litchfield, Electus B. Litchfield, and John Stryker, filed their affidavit, bond, and petition asking the removal of this action from said district court to this court under the provisions of the act of Congress, approved March 2nd, 1867, entitled, An act to amend an act for the removal of causes in certain cases from the State courts, approved July 27, 1866.

And it appearing to said district court that said Edwin C. Litchfield, Electus B. Litchfield, and John Stryker were non-residents of the State of Iowa and residents of the State of New York, and that their application for the removal of this cause to this court is
34 in all respects conformed to the requirements of said act of Congress, the said district court, at the October term thereof, in the year 1868, made the usual order transferring and removing this cause to this court as to the defendants, Edwin C. Litchfield, Electus B. Litchfield, and John Stryker, and this cause as to said defendants — removed to this court for trial.

And it appearing that the defendants, Samuel G. Wolcott, Roswell S. Burrows, Wm. J. McAlpine, Richard B. Chapman, Albert H. Tracy, Francis W. Tracy, Harriet Tracy, and Edward Wade, are each and every of them now residents of the State of Iowa and district of Iowa, and under the statute above referred to are also entitled to a removal of this cause from the State court, and that said defendants, with the express consent and approval of the plaintiff, have appeared and answered the bill herein and asked to be made parties defendant, and that their rights may be heard and determined in this court and on the trial of this action.

And it further appearing to this court that the defendants so asking to be made parties claimant hold under the same title as the defendants, Edwin C. Litchfield, Electus B. Litchfield, and John Stryker, their defence is in all respects identical, with the said plaintiff consenting, it is ordered that said Samuel G. Wolcott, Wm. B. Wells, Roswell S. Burrows, Wm. J. McAlpine, Richard B. Chapman, Albert H. Tracy, Francis W. Tracy, Harriet Tracy, and Edward Wade, and each and every of them, be made parties defendant herein; that the answer filed by said persons be taken and deemed their answer to the complainant's bill, and that by their appearance and answer herein the said persons be deemed and treated as defendants herein and their rights in the premises adjudicated in and by this court in this action.

The defendant then read the following portions of said record:

35 *Notice Respecting Certain Lands in the State of Iowa.*

Notice is hereby given that the lands along the Des Moines river, in Iowa, and within the within-claimed limits of the Des Moines grant in that State, above the mouth of the Raccoon Forks of said river, which have been reserved from sale heretofore on *the* account of the claim of the State thereto, will continue reserved for the time being from sale or from location by any species of script or warrant, notwithstanding the recent decision of the Supreme Court against the claim.

This action is deemed necessary to afford time for Congress to consider upon memorial or otherwise, the case of actual *bona fide* settlers holding under titles from the State, and to make such provisions, by confirmation or adjustment of the claims of such settlers, as may appear to be right and proper.

General Land Office, May 18th, 1860.

JOS. S. WILSON,
Commissioner of the General Land Office.

Such notice was at once posted in a conspicuous place in said land offices in Iowa, and so remained posted until the close of the year 1863.

On 25th May, 1860, Wm. T. Steiger, an agent, in behalf of the Dubuque & Pacific Railroad Company, filed in the General Land Office a list of lands lying within the claimed limits of the Des Moines River grant above the Raccoon Forks, and claimed to select some of them for said railroad company under the act of 15th May, 1856, granting lands to Iowa for railroad purposes.

The Commissioner of the General Land Office, in June, 1860, acknowledged the receipt of the list, and added:

"The tracts in said list are above the Raccoon Forks, and within the lands that had been selected under the Des Moines river grant, by act of 8th of August, 1846, and in view of the recent decision of the Supreme Court affecting the title to lands under that grant
36 above the forks, the present lists are presented by you. As the matter has been placed in train for congressional intervention, no action can be taken in the matter presented by you until Congress shall have had time to consider and dispose of the subject.

"Respectfully, your obedient servant,

"JOS. S. WILSON,
"*Commissioner.*"

On the 7th July, 1860, the Commissioner of the Land Office, in an official letter to the Secretary of the Interior in relation to the same subject, said:

"Without passing upon or, in fact, considering the question as to the right of the State under the railroad grant to these lands, which at this date of the grant had been withdrawn from sale or location, the fact that Congress has taken incipient action in the matter of

itself justifies us in not recommending further proceedings by the Department until after the close of the next session of Congress.

"Respectfully, your obedient servant,

"JOS. S. WILSON,

"*Commissioner.*"

On the 6th September, 1860, the Secretary of the Interior addressed the following letter to the Commissioner of the General Land Office:

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *Sept. 6th*, 1860.

SIR: In the absence of any direct application by the Governor of the State of Iowa for final action in the certification of certain lands common to the claimed limits of the grant to that State for the improvement of the Des Moines river and the grants for aid in constructing railroads, my opinion is that it will be proper, as you suggest, to delay action until after the close of the next session of Congress.

The papers enclosed with your letter of the 7th July last and 3d instant are now returned.

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

The Commissioner of the General Land Office.

37 WASHINGTON, *June 1st*, 1860.

Hon. Joseph S. Wilson, Commis'r Gen'l Land Office.

SIR: Having been informed that the resolution introduced in the Senate by the Hon. Mr. Grimes, of Iowa, for confirming sales made by the State of certain lands on and near the Des Moines river, and for other purposes, S. R. No. 37, has just been referred by the Committee on Public Lands of the Senate to the Secretary of the Interior for his views, and is now before you for report, I respectfully ask, in behalf of the railroad companies, that the enclosed printed copy of the decision of the Supreme Court referred to in the resolution may be communicated to the committee; also that the companies may have the benefit of the facts that the lands in question were, by agreement, in adjusting the railroad grants at your office, placed in suspension, to await the decision of the courts, and that since the decision of the Supreme Court was rendered they have been claimed and selected for the railroads, and particular lists and maps thereof filed by me, as their agent, in the General Land Office.

I am, very respectfully, your obedient servant,

WM. T. STEIGER,
Agent, &c.

Notice Continuing Reservation of the Lands from Sale, May 18th, 1860.

Notice respecting certain lands in the State of Iowa.

Notice is hereby given that the lands along the Des Moines river in Iowa, and within the claimed limits of the Des Moines grant in

that State, above the mouth of the Raccoon Forks of said river, which have been reserved from sale heretofore on account of the claim of the State thereto, will continue reserved, for the time being, from sale or from location by any species of scrip or warrants, notwithstanding the recent decision of the Supreme Court against the claim.

38 This action is deemed necessary to afford time for Congress to consider, upon memorial or otherwise, the case of actual *bona fide* settlers holding under titles from the State, and to make such provision, by confirmation or adjustment of the claims of such settlers, as may appear to be right and proper.

General Land Office, May 18, 1860.

JOS. S. WILSON,
Commissioner of the General Land Office.

Steiger, Agent, &c., to Commissioner Wilson, May 25th, 1860.

WASHINGTON, *May 25th*, 1860.

Hon. Joseph S. Wilson, Comm'r Gen'l Land Office.

SIR: Referring to the recent decision of the Supreme Court of the United States on the Des Moines river improvement claim, I herewith transmit a list, marked C, of my selections of this date, for and on account of the Dubuque & Pacific railroad and branch under the act of 15th May, 1856, of the interfering lands in the Fort Dodge district, Iowa, within the six and the fifteen miles limits of said railroad grant heretofore held in suspension in our adjustment.

This list discriminates the lands conditionally approved for the river grant from those not yet approved in any list, and embraces as follows:

Whole quantity, 6-mile limits	59,418.22	acres.
15-mile "	73,729.35	"
Total	133,606.57	

Of which the quantity not yet approved all west of the river is as follows:

Not approved, 6-mile limits	15,450.47
15-mile "	16,214.12
Total	31,664.59

39 I also enclose a connected diagram, marked D, showing by the pink and yellow shades thereon the lands hereby selected.

Please acknowledge the receipt hereof.

Very respectfully, your obed't serv't,

WM. T. STEIGER, *Ag't, &c.*

Commissioner Wilson to Steiger, Agent, &c., June 12th, 1860.

GENERAL LAND OFFICE, *June 12th*, 1860.

W. T. Steiger, Esq., Washington, D. C.

SIR: I have to acknowledge the receipt of your letter of the 25th ult. enclosing lists and maps of lands selected and claimed under the railroad grant to Iowa by act of May 15, 1856, for the Dubuque & Pacific railroad.

The tracts in said lists are above the Raccoon Forks, and within the lands that have been selected under the Des Moines river grant by act of 1846, and, in view of the recent decision of the Supreme Court affecting a title to lands under the grant above the said forks, the present lists are handed in by you.

As the matter has been placed in train for congressional intervention, no action can be taken in the matter presented to you until Congress shall have time to consider and dispose of the subject.

Very respectfully, your ob'd't serv't,

JOS. S. WILSON,
Commissioner.

Commissioner Wilson to Secretary Thompson, July 7th, 1860.

Hon. J. Thompson, Sec. of Interior.

SIR: I have the honor to return herewith the letter, dated 26th ultimo, from W. T. Steiger, agent, &c., asking that certain lands selected and claimed under the railroad-grant act to Iowa, of May 15th, 1856, may, without further delay, be certified to the State, and, pursuant to reference, respectfully submit that the lands referred to are embraced in certain lists filed in this office during the past month,

in view of the recent decision of the Supreme Court affecting
40 a title to lands under the Des Moines river grant of 1846, above the Raccoon Forks. The tracts in said lists are above the Raccoon Forks and within the lands that have been selected under the above-mentioned river grant

Under the receipt of these lists Mr. Steiger was advised that, as the matter had been placed in train for congressional intervention, no action could be taken by this office until Congress should have had time to consider and dispose of the subject.

Without passing upon or, in fact, considering the question as to the right of the State under the railroad grant to the lands, which at the date of that grant had been withdrawn from sale or location, the fact that Congress has taken incipient action in the matter of itself justifies us in not recommending further proceedings by the Department until after the close of the next session of Congress.

Very respectfully, your ob't serv't,

JOS. S. WILSON,
Commissioner.

Secretary Thompson to Senator Jones, Nov. 3d, 1860.

Extract from a letter dated—

DEPARTMENT OF THE INTERIOR,
WASHINGTON, Nov. 3d, 1860.

SIR: I have the honor to acknowledge the receipt of your letter of this date, and have considered the same in connection with the letter of Mr. Steiger, agent of the Dubuque and Sioux City Railroad Company, of the 1st instant, both relating *the* to the certification to the State of Iowa of lists of odd-numbered sections of land within the six and fifteen mile limits of the railroad "from the city of Dubuque to a point on the Missouri river near to Sioux City."

For your information I herewith enclose copies of my letters of the 6th September last to the Commissioner of the General Land Office, and of the 1st of October to Mr. Steiger, and in reply to your letter would state that, as respects those tracts within the limits of the railroad grant which have already been certified to the
41 State of Iowa by my predecessor, under the previous grant of 8th August, 1846, in the absence of a formal and sufficient surrender by the State of all claims under the prior grant, I deem it proper to suspend action at present so far as the claims interfere. The subject of these opposing claims is involved with proposed legislation pending in Congress, and the State authorities still assert the equity of the title which has been recognized by my predecessors, though since declared to be invalid by a decision of the Supreme Court of the United States.

* * * * * * *

Very respectfully, your obedient servant,
J. THOMPSON, *Secretary.*

Hon. Geo. W. Jones, of Iowa, present.

Secretary Thompson to Governor Kirkwood, Nov. 3rd, 1860.

Extract from a letter dated—

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *November* 3d, 1860.

His Excellency S. J. Kirkwood, Governor, &c., Des Moines, Iowa:

* * * * * * *

Again I would remark that, so far as any proposition for congressional aid in behalf — the State was brought to the notice of this Department during the last session of Congress, it was confined, as I understood it, to that portion of the claimed lands which have been heretofore certified by my predecessors, and which has not been included in the lists of lands ordered into market. In respect to this class of lands, I had the honor, in a communication of the 11th June last, addressed to Hon. R. W. Johnson, chairman of the Committee Public Lands of the United States Senate, to recommend the

report to that body, for adoption by Congress, the form of a joint resolution, as follows:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That all the title which the United States still retain in the tracts of land
42 along the Des Moines river and above the Raccoon Forks thereof in the State of Iowa which has been heretofore certified to said State improperly by the Department of the Interior as part of the grant by act of Congress approved August 8th, 1846, be, and the same is hereby, relinquished to the State of Iowa."

You thus perceive that, so far as my predecessors have acted under the grant of August 8th, 1846, I was willing to recommend a confirmation of that action by Congress. I cannot, however, go further.

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

Joint Resolution to Quiet Title to Lands in the State of Iowa, Approved March 2d, 1861. (12 *Stat. at Large, p.* 251.)

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That all the title which the United States still retain in the tracts of land along the Des Moines river and above the mouth of the Raccoon Forks thereof in the State of Iowa which have been certified to said State improperly by the Department of the Interior as part of the grant by act of Congress approved August 8th, 1846, and which is now held by *bona fide* purchasers under the State of Iowa, be, and the same is hereby, relinquished to the State of Iowa.

Approved March 2nd, 1861.

Pleas in the circuit court of the United States for the southern district of New York, held at the United States circuit court rooms, in the city of New York, in said district, of the term of April, in the year of our Lord one thousand eight hundred and sixty-five.

Witness the Honorable Samuel Nelson, justice of the Supreme Court of the United States.

KENNETH G. WHITE, *Clerk.*

43 SOUTHERN DISTRICT OF NEW YORK, *ss:*

The Des Moines Navigation & Railroad Company, being a corporation created by and under the laws of the State of Iowa, and organized and residing in said State of Iowa, were summoned to answer Samuel G. Wolcott, a citizen of said State of New York, of a plea of breach of covenant; and thereupon the said Samuel G. Wolcott, plaintiff, by Jasper W. Gilbert, his attorney, complains of the said The Des Moines Navigation & Railroad Company, defendants, of a plea of breach of covenant, for that whereas heretofore, to wit, on the 8th day of August, in the year of our Lord one thousand eight hundred and fifty-nine, at Des Moines, in the said State of Iowa, to wit, at the city of New York, in the said southern district of New

York, by a certain deed-poll then and there made by the said defendants, which said deed-poll, sealed with the seal of the said defendants, the plaintiff now brings into court here, the date whereof is the day and year aforesaid, it was witnessed: That the said defendants, in consideration of the sum of three thousand and forty dollars to them in hand paid by the said plaintiff, did thereby grant and convey to the said plaintiff the following tract of land in said State of Iowa, to wit, in Webster county, the east half of section seventeen, in township eighty-eight, range twenty-seven, containing three hundred and twenty acres; and the said defendant, in and by the said deed-poll, then and there, in consideration of the moneys aforesaid, did warrant the title of said land against all persons whomsoever, and did thereby covenant to and with the said plaintiff that the said defendants then had, and that the said plaintiff, by reason of the said deed-poll, did and would receive and take, a good and perfect title in fee to the said tract of land, as by the said deed-poll, reference being thereto had, will more fully and at large appear; yet the said plaintiff in fact saith that the said defendants then and there had no title whatever to the said tract of land nor any part thereof, and that the said plaintiff did not then or there, or at
44 any time afterwards, by reason of the said deed-poll or otherwise, receive, obtain, or take any title whatsoever to the said tract of land or any part thereof, but that the said defendants, to fulfill their said warranty of the title to said land, and to cause the said plaintiff to receive, obtain, or take a good and perfect title in fee to the said tract — land, although often requested so to do by the said plaintiff, have hitherto wholly neglected and refused, and still do neglect and refuse; of all of which the said defendants had notice; and so the said plaintiff in fact saith that the said defendants, although often requested, etc., have not kept the said covenants so by them made as aforesaid, but have broken the same, to the damage of said plaintiff of ten thousand dollars, and thereof the said plaintiff brings his suit, etc.

And the said defendants, by W. & C. Tracy and Tallmadge, their attorneys, come and defend the wrong and injury when, etc., and, as to the supposed breach of covenant above assigned and alleged by the said plaintiff, they, the said defendants, say that the plaintiff ought not to have or maintain his aforesaid action thereof against them, the said defendants, because they say that they, the said defendants, before and at the time of the making of the said indenture in the said plaintiff's declaration above mentioned, were seized in fee of the said tract of land, and did then and there, by the said indenture, convey to the said plaintiff a good and perfect title in fee to the same; and this the said defendants are ready to verify. Wherefore the said defendants pray judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against them, &c. And for a further plea in this behalf the said defendants, by leave of the court here for the purpose first had and obtained, according to the form of the statute in such case made and provided, say that the said plaintiff ought not to have or maintain his aforesaid action thereof against them, because they say that the said defend-

ants, after the making of the said indenture in the said declaration mentioned and before the commencement of this suit, to wit, on the first day of August, 1862, acquired and took a
45 title and estate in fee in the said tract of land; which said last-mentioned title and estate, by the common law of the State of Iowa, and also by the statute of the State of Iowa, did forthwith enure to and vest in the said plaintiff, as the grantee of the said defendants, by the said indenture; and by means of the premises the said plaintiff, before the commencement of this suit, did receive and take good and perfect title in fee to the said tract of land, of all which the said plaintiff had notice, without this, that the said plaintiff has suffered any damage by means of anything in the said declarations mentioned; and this the said defendants are ready to verify. Wherefore they pray judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against them, &c.

And the plaintiff, by his attorney aforesaid, as to the said plea of the said defendants by them first above pleaded, says that he, the said plaintiff, ought not, by reason of anything in that plea alleged, to be barred from having or maintaining his aforesaid action, because he says that the said defendants, at the said time when, &c., were not seized in fee of the said tract of land, nor did they convey to plaintiff any title thereto in any manner and form as in that plea in that behalf alleged; and this the said plaintiff prays may be inquired of by the country, &c.

And the said defendants do the like.

And the plaintiff, by his attorney aforesaid, as to the said plea of the said defendants by them secondly above pleaded, says that he, the said plaintiff, ought not, by reason of anything in that plea alleged, to be barred from having or maintaining his aforesaid action thereof, because he says that the said defendants did not, at the said time when, &c., acquire or take any title or estate, nor did such supposed title or estate vest in the said plaintiff, nor did the plaintiff receive or take any title whatever in manner and form as in that plea alleged; and this the said plaintiff — may be inquired of by the country, &c.

And the said defendants do the like.

46 Therefore it is ordered that the issues above joined be tried at the next term of the said circuit court, to be held at the court-rooms in said district above mentioned, commencing on the third Monday of October next, the same day as given to the parties aforesaid.

Afterwards, to wit, on the 27th day of October, in the term of October, in the year of our Lord one thousand eight hundred and sixty-five, in the said circuit court, at the court-room thereof, in the city of New York, in said southern district of New York, before the Hon. Samuel Nelson, a justice of the Supreme Court of the United States, came *to* the parties aforesaid, by their attorneys aforesaid, and the jurors of the jury being summoned also came, who, to speak the truth in the matter aforesaid in issue, being chosen, tried, and

sworn, say, upon their oaths, that the defense by the said defendants above pleaded is true; and they find and return a general verdict in favor of the defendants aforesaid.

"Therefore it is considered by the court here that the said plaintiff take nothing by his said action, but that he be in mercy, etc., and that the said defendants go thereof without day, etc. And it is further considered that the said defendants recover against the plaintiff the sum of twenty-seven dollars and thirty cents for their costs and charges in and about their defence in this behalf expended, and that the said defendants have execution thereof."

Judgment signed this 31st day of October, A. D. 1865.

R. E. STILLWELL,
Deputy Clerk.

CITY AND COUNTY OF NEW YORK, *ss:*

In the Circuit Court of the United States for the Southern District of New York.

CALVIN BURR
ag'st
THE DES MOINES NAVIGATION & RAILROAD COMPANY.

47 Calvin Burr, a citizen of the State of New York, complains of the Des Moines Navigation & Railroad Company, being a corporation created by and under the laws of the State of Iowa, and organized and residing in said State of Iowa, and being in custody, &c.; of a plea of breach of covenant, for that whereas heretofore, to wit, on the fifteenth day of November, in the year of our Lord one thousand eight hundred and fifty-eight, to wit, at Des Moines, in said State Iowa, by a certain deed-poll there and then made by the defendants, which said deed-poll, sealed with the seal of said defendants, the plaintiff now brings into court here, the date whereof is the day and year aforesaid, it was witnessed: That the said defendants, in consideration of the sum of seventeen thousand eight hundred and sixty-eight dollars and eighty cents to them in hand paid by the said plaintiff, did thereby grant and convey to the said plaintiff the the following tracts of lands in said State of Iowa, to wit, all of section nine, in township eighty-nine, range twenty-eight, and all of section twenty-one, in township eighty-nine, range twenty-eight, containing together twelve hundred and eighty acres; and the said defendants, in and by the said deed-poll, there and then, in consideration of — aforesaid, did warrant the title of said land against all persons whomsoever, and did thereby covenant to and with the plaintiff that the said defendants then had, and that the said plaintiff, by reason of the said deed-poll, did and would receive and take, a good and perfect title in fee to the said tracts of land and each thereof, as by the said deed-poll, reference being thereto had, will more fully and at large appear; yet the said plaintiff in fact saith that the said defendants then and there had no title whatever to the said tracts of land or either thereof nor any part thereof, and that the plaintiff did not then or there, or at any time afterward, by reason of the said

deed-poll or otherwise, receive, obtain, or take any title whatsoever to the said tracts of land or either thereof, but that the said defendants, to fulfill their said warranty of the title to said lands and to cause the said plaintiff to receive, obtain, or take a good and
48 perfect title in fee to the said tract of land, although often requested so to do by the said plaintiff, have hitherto wholly neglected and still do neglect and refuse; of all which the said defendants had notice; and so the said plaintiff in fact saith that the said defendants, although often requested to, have not kept the said covenants so by them made as aforesaid, but have broken the same, to the damage of the said plaintiff thirty thousand dollars, and thereof the said plaintiff brings his suit, &c.

J. W. GILBERT,
Attorney for Plaintiff.

And the said defendants, by Tracy & Olmsted, their attorneys, come and defend the wrongs and injury, when, &c.; and as to the supposed breach of covenant above assigned and alleged by the said plaintiff, then the said defendants say that the said plaintiff ought not to have or maintain his aforesaid action thereof against them, the said defendants, because they say that they, the said defendants, before and after the time of making of the said indenture in said plaintiff's declaration above mentioned, were seized in fee of the said tracts of land, and did then and there, by the said indenture, convey to the said plaintiff a good and perfect title in fee to the same; and this the said defendants are ready to verify. Wherefore the said defendants pray judgment if the said plaintiff ought to have or maintain his aforesaid action against them, &c.

And for a further plea in this behalf the said defendants, by leave of the court here for this purpose first had and obtained according to the form of the statute in such case made and provided, say that the said plaintiff ought not to have or maintain his aforesaid action thereof against them, because they say that the said defendants, after making the said indenture in the said declaration mentioned and before the commencement of this suit, to wit, on the first day of August, 1862, acquired and took a title and estate in fee in the said tracts of land; which last-mentioned title and estate, by the
49 common law of the State of Iowa, and also by the statutes of the said State of Iowa, did forthwith enure to and vest in the said plaintiff, as the grantee of the said defendants by the said indenture, and that by means of the premises the said plaintiff, before the commencement of this suit, did receive and take a good and perfect title in fee to the said tracts of land, of all which the said plaintiff had notice, without this, that the said plaintiff suffered any damage by means of anything in the said declaration mentioned; and this the said defendants are ready to verify. Wherefore they pray judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against them, &c.

United States Circuit Court, Southern Dist. of New York.

CALVIN BURR
ag't
THE DES MOINES NAVIGATION & RAILROAD COMPANY.

And the plaintiff, by his attorney aforesaid, as to the said plea of the said defendants by them first above pleaded, says that he, said plaintiff, ought not, by reason of anything in that plea alleged, to be bound from maintaining his aforesaid action, because he says that the said defendants, at the said time, when, etc., were not seized in fee of the said tracts of land, nor did they convey to the said plaintiff any title thereto in manner and form as in that plea in that *belief* alleged; and this the said plaintiff prays may be enquired of by the country, etc.; and the said defendants do the like.

And the said plaintiff, by his attorney aforesaid, as to the said plea of the said defendants by them secondly above pleaded, says that, is the said plaintiff or not, by reason of anything in that plea alleged, to be bound from having or maintaining his aforesaid action thereof, because he says that the said defendants did not, at the said time, when, &c., acquire or take any title or estate, nor did such supposed title or estate vest in the said plaintiff, nor did the plaintiff receive or take any title whatsoever in manner and form as
50 in that plea alleged; and this the said plaintiff pray- may be enquired of by the country, etc.; and the said defendants do the like.

J. W. GILBERT,
Plaintiff's Attorney.

Therefore the issues above joined are ordered by the circuit court of the United States for the southern district of New York to be tried at a stated term of said court appointed to be held at the city hall of the city of New York on the — day of ——, in the year of our Lord one thousand eight hundred and sixty-four, and place last above named, before Hon. —— Shipman, one of the justices of said court, according to the form of the statute in said case made and provided.

Came as well the above-named plaintiff as the above-named defendant, by their respective attorneys above mentioned; and the jurors of jury summoned to try the said issues, being called, also came, who, to speak the truth of the matters aforesaid being chosen, tried, and sworn, say, upon their oath, that the said defendant is guilty of the several breaches of covenant above laid to its charge, in manner and form as the said defendant hath above in that behalf alleged against the said defendant; and the said jury assess the damages of the said plaintiff, by reason of the premises, over and above his costs and charges by him in — *above* his suit in this behalf expended, to the sum of twenty-four thousand two hundred and fifty-five $\frac{76}{100}$ dollars, and for these costs and charges to six cents.

Therefore, it is considered that the said plaintiff do recover against the said defendant his said damages, costs, and charges by the jurors aforesaid, in form aforesaid assessed, and also thirty-eight and $\frac{35}{100}$

dollars for his costs and charges by the said court now here adjudged of increase to said plaintiff, and with his assent, which said damages, costs, and charges in the whole amount to twenty-four thousand two hundred and ninety-four and $\frac{11}{100}$ dollars.

And the said defendants in mercy, etc.

Judgment signed this 21st November, 1864.

R. E. STILLWELL,
Deputy Clerk.

51 The court then delivered to the jury the following charge:

GENTLEMEN OF THE JURY: You will see that the conclusions to which I have come upon the questions raised by the evidence in this case dispose of all except one, and that relative to the damages only, which I will submit to you. I therefore charge you—

1. That no title to the lands in question passed to the Territory of Iowa by virtue of the act of Congress — August 8th, 1846, these lands lying above the Raccoon Forks of the Des Moines river. This point has been already settled by the Supreme Court of the United States in the case of the Dubuque & Pacific Railroad Company *vs.* Litchfield, 23 of How. Rep., 66.

2. That none of the acts of the executive officers of the United States which have been proven, nor all of them taken together, had any effect to extend the operation of the act of August 8th, 1846, over these lands, nor in any manner to confer a title to them, either at law, or, strictly speaking, in equity, upon the Territory or State of Iowa, or upon these defendants. This result follows from the decision of the Supreme Court already cited.

3. That these acts of the executive officers of the United States, proven and relied on in this case, did not reserve to the United States these lands for the purpose of aiding in any other objects or internal improvements or for any other purpose whatever, and therefore they are not drawn within the proviso of the act of May 15th, 1856. Those of them which proceeded upon the idea that these lands were embraced in the grant of August 8th, 1846, were mere errors arising out of a misconstruction of the terms of that grant. They were, no doubt, made in good faith and for the purpose of formally fixing and defining rights supposed to have been already granted by Congress. But as these acts, according to the case, 23d How., 66, exceeded the grant made by Congress, they were void.

52 These acts were intended as acts of transfer and not acts of reservation. To now attribute to them the effect of having reserved these lands to the United States—that is, set them apart for the use of the Government itself—would be reserving the natural consequences originally intended to flow from them. Such a construction of these acts, I think, would be arbitrary and neither warranted by any circumstances presented by the evidence or by the settled rules of law. All these acts, therefore, left the lands in question in the same status in which they have always remained. That status was unchanged, not only in fact but in contemplation of law. The lands were neither sold, granted, nor reserved to the United States for any purpose, but remained in the great body of

the public domain, subject to the control of Congress and to the operation of the laws in force regulating the disposition of the public lands.

4. If these views are correct, then the lands in question were embraced in the body of the act of May 15th, 1856, and the title passed by that grant to the State of Iowa in trust. The State took the lands in trust, and by an express provision of the act they were to "be applied to no other purpose whatever" than that of aiding in the construction of certain railroads therein named. It is unnecessary to say that the defendants' enterprise is not one of those named in the act as those to which the application of the lands granted is expressly restricted. Whether or not a title *in presenti* passed to the State on the passage of this act I do not deem it necessary now to determine; but I think it is quite certain that that act placed these lands in such a position that they were not reached by the resolutions of Congress of March 2d, 1861, and July 12th, 1862, upon which the defendants rely. To conclude otherwise would be to hold that these joint resolutions repeal *pro tanto* without any express provisions—by implication merely—the public act of May 15th, 1856. A construction by which the repeal of a statute by implication is sought to be established is never favored, especially where private rights are concerned.

5. These views, being legal conclusions drawn from facts
53 conceded in the case or established by uncontradicted evidence, cover the whole controversy, except the question of damages. It is my duty, therefore, to direct you to find a verdict for the plaintiff, and assess the damages which he has proven he has suffered from the failure of his title to these lands. The rule by which you will be guided will be the amount of the consideration paid, with interest from the day of payment to the present time, at the rate of six per cent. per annum.

The defendants' counsel excepted to that part of the charge concerning the effect of the act of August 8th, 1846, contained in the second proposition or section of said charge, and also excepted to that part of the charge contained in the third proposition or section thereof, and also excepted to that part of the charge contained in the fourth proposition or section thereof, and also to that part of the charge contained in the fifth proposition or section thereof.

The court thereupon charged and instructed the jury to find a verdict for the plaintiff; to which charge and instructions the defendants' counsel excepted.

The jury found a verdict in favor of the plaintiff, and assessed his damages at $24,254.00

And because the said several exceptions do not appear by the record of the said trial, the said presiding judge, on the prayer of the defendants, has set to this bill of exceptions his seal the third day of November, one thousand eight hundred and sixty-four.

WILLIAM D. SHIPMAN. [L. S.]

Filed Nov. 21st, 1864.

Bond for Cost.

Docket entries and extract from minutes Supreme Court of the United States in Samuel G. Wolcott, plaintiff in error, *v.* The Des Moines Navigation and Railroad Company.

Docket Entries.

54 Supreme Court of the United States. December Term, 1864.

THE DES MOINES NAVIGATION & RAILROAD COMPANY, Plaintiff in Error, *vs.* CALVIN BURR. } No. 336.

In error to the circuit court of the United States for the southern district of New York.

Chas. Tracy; P. Smith, for intervener.

1864, Dec. 10.—Record received and filed.

No. 221. December term, 1865. Docket entries continued:

1866, Feb. 8.—Motion of Mr. Allison for leave to intervene filed.
1866, Feb. 8.—Affidavit of J. M. McKinley filed.
" 13.—Leave granted to the Dubuque & Sioux City R. R. Co. to intervene, &c.
1866, Feb. 21.—Brief of P. Smith, for intervener, filed.

No. 133, of December term, 1869. Docket entries continued:

1866, Dec. 14.—Mr. J. F. Duncombe filed a motion to intervene, &c.
1866, Dec. 17.—Leave granted Mr. Duncombe to appear and file printed argument.
1866, Dec. 17—No. 204 to be argued with this case.
1867, Feb. 8.—Submitted with No. 204.
" May 13.—Reversed with costs and a venire awarded.

Supreme Court of the United States. Dec. Term, 1865.

THE DES MOINES NAVIGATION AND RAILROAD COMPANY, Plaintiff in Error,

vs.

CALVIN BURR.

Extracts from Minutes.

* * * * * * *

On consideration of the motion made and affidavit filed in this cause on the 8th instant, it is now here ordered by the court that leave be, and the same is hereby, granted counsel of the
55 Dubuque and Sioux City Railroad Company to appear and be heard on the argument when this cause is reached.

13 February, 1866.

No. 133, of December Term, 1866.

* * * * * * *

THE DES MOINES NAVIGATION AND R. R. Co., Pl'ff in Error,
vs.
CALVIN BURR.

On consideration of the motion of Mr. Duncombe for leave to intervene, &c., in this case, it is now hereby ordered by this court that leave be, and the same is hereby, granted Mr. Duncombe to intervene in behalf of the Iowa Homestead Company in the argument of this cause, and to file a printed argument.

17 December, 1866.

THE DES MOINES NAVIGATION AND RAILROAD COMPANY, Plaintiff in Error,
vs.
CALVIN BURR.

Ordered by the court that No. 204, Samuel G. Wolcott, pl'ff in error, *vs.* Des Moines Navigation & R. R. Co., be argued by counsel, if desired, with No. 133, when reached in the regular call of the docket.

17 December, 1866.

THE DES MOINES NAVIGATION & RAILROAD COMPANY, Plaintiff in Error, *vs.* CALVIN BURR. } No. 133.

This cause was submitted to the court on the record and printed argument by Mr. Smith, of counsel for interveners, and stipulation of counsel filed to be considered with No. 204, submitted on printed arguments at the last term of this court.

8th February, 1867.

56 Supreme Court of the United States. December Term, 1866.

THE DES MOINES NAVIGATION & RAILROAD COMPANY, Plaintiff in Error, *vs.* CALVIN BURR. } No. 133.

In error to the circuit court of the United States for the southern district of New York.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the southern district of New York, and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the judgment of said circuit court in this cause be, and the same is hereby, reversed with costs; and that this cause be, and the same is hereby, remanded to the said circuit court, with directions to award a *venire facias de novo*.

Per Mr. Justice Nelson.

Mr. Justice Miller took no part in the decision of this case.

True copies of docket entries, extract from minutes, and judgments.

Test: [SEAL.] D. W. MIDDLETON,
Clerk Supreme Court U. S.

Supreme Court of the United States. December Term, 1866.

THE DES MOINES NAVIGATION & RAILROAD COMPANY,
Plaintiff in Error,
vs.
CALVIN BURR. } No. 221.

In error to the circuit court of the United States for the southern district of New York.

The Dubuque & Sioux City Railroad Company, a corporation, etc., by Wm. B. Allison, its attorney, now comes and moves the court for leave to intervene in the above-entitled cause, and
57 also for leave to file an argument in same for reasons set forth in affidavit filed herewith and made a part hereof.

DUBUQUE & SIOUX CITY
RAILROAD COMPANY,
By WM. B. ALLISON, *Its Attorney.*

True copy. Test:
[L. S.] D. W. MIDDLETON,
Clerk Supreme Court U. S.

Supreme Court of the United States. December Term, 1865.

THE DES MOINES NAVIGATION & RAILROAD COMPANY,
Plaintiff in Error,
vs.
CALVIN BURR. } No. 221.

In error to the circuit court of the United States for the southern district of New York.

I, James McKinley, on oath say that I am an attorney and counsellor at law, and am assistant attorney of the Dubuque & Sioux City Railroad Company; that within the past few days, and not before, I have had an opportunity to examine the record in the case above named; that the said railroad company are materially interested in obtaining a correct decision of the principal point raised in said cause, and that I verily believe a decision of the point against the above-named defendant in error would prejudice the interest of said Dubuque & Sioux City R. R. Company, although not a party to the record in the above-named case. The decision made by the court below (Hon. Wm. D. Shipman) is the point on which rests the title to above seventy-seven thousand acres of land granted by Congress to aid in the construction of said Dubuque & Sioux City railroad.

Further, that I have reason to fear that said Burr is not a *bona*

fide litigant, but, on the contrary, is desirous of obtaining a decision against himself with a view to prejudicing the title of the Dubuque & Sioux City Railroad Company and their grantees.

Signature to the foregoing affidavit.

(Signed) JAMES M. McKINLEY.

58 Subscribed and sworn to before me, the clerk of the district court of Dubuque county, Iowa, this 1st day of February 1866.

Witness my hand and official seal.

[SEAL.] (Signed) M. LEPPER, *Clerk.*

True copy. Test:

[SEAL.] D. W. MIDDLETON,
Clerk Sup. Court U. S.

(Endorsed as follows:) The Des Moines Navigation & Railroad Company, plaintiff in error, *vs.* Calvin Burr. Affidavit of James M. McKinley. Filed Feb., 1866. George B. Corkhill, clerk.

Motion on Behalf of the Iowa Homestead Company and Their Grantees to Intervene for the Purpose of Argument.

In the Supreme Court of the United States. Dec. Term, 1866.

THE DES MOINES NAVIGATION & RAILROAD COMPANY, Plaintiff in Error,
vs.
CALVIN BURR, Defendant in Error.
} No. 133. Land.

Now, to wit, December 14, 1866, comes the Iowa Homestead Company and their grantees, of the State of Iowa, and by their attorney, John F. Duncombe, move the Court to permit said parties to intervene in this cause for the purpose of argument on the part of the defendant in error, and for cause state—

1. That said company and their grantees are directly interested in the decision of this cause in this, to wit, said company and their grantees claim to be owners in fee-simple of the land named in the pleadings, and over fifty thousand acres of other lands, the title to which is involved in the decisions of the legal questions involved in this suit.

(Signed) J. F. DUNCOMBE,
Attorney for Intervener.

True copy. Test:

[SEAL.] D. W. MIDDLETON,
Clerk Supreme Court U. S.

59 Endorsed as follows: Supreme Court U. S. December term, 1866. Des Moines Navigation & Railroad Company, plaintiffs in error, *vs.* Calvin Burr. Motion on part of Iowa Homestead Company to intervene for argument. Filed 14th December, 1866. Granted J. F. Duncombe, for interveners.

C.—Docket Entries and Extracts from Minutes Supreme Court United States in The Des Moines Navigation & Railroad Company, Plaintiff in Error, v. Calvin Burr.

Supreme Court of the United States. December Term, 1865.

SAMUEL G. WOLCOTT, Plaintiff in Error,
vs.
THE DES MOINES NAVIGATION & RAILROAD CO. } No. 303.

In error to the circuit court of the United States for the southern district of New York.

J. W. Gilbert; P. Smith (for intervener); Chas. Tracy; Litchfield.

Docket entries:

1865, Nov. 27.—Record received and filed.
" Dec. 21.—Stipulation to submit filed.
" " Brief of J. W. Guilbert, for the plaintiff in error, filed.
" " Brief of Litchfield, for the def't in error, filed.
1866, Jan. 2.—Submitted under 20th rule.
" Feb. 8.—Motion of Mr. Allison for leave to intervene and also for leave to file printed argument.
" " Affidavit of J. M. McKinley filed.
" " 13.—Leave granted intervener to file argument before 1st of March.
" " 21.—Brief of P. Smith, for intervener, filed.
" " 26.—On motion of Mr. Cook, leave granted him to file argument before 1st March.
" Mar. 12.—Ordered to be continued to the next term, with leave to any of the parties to file additional arguments.
60 1865, Mar. 23.—Brief of Mr. B. C. Cook, for intervener, filed.

No. 204, of December term, 1866. Docket entries continued:

1866, Dec. 4.—Reply brief of Litchfield filed.
" " 17.—Ordered that counsel have leave to argue this case with No. 133, if desired.
1867, May 13.—Adjudged to be affirmed with costs.

Extracts from Minutes.

Supreme Court of the United States. December Term, 1865.
No. 303.

* * * * * * *

SAMUEL G. WOLCOTT, Plaintiff in Error,
vs.
THE DES MOINES NAVIGATION & RAILROAD CO. } No. 303.

This cause was submitted to the consideration of the Court on the record and printed arguments by Mr. Guilbert, of counsel for the

plaintiff in error, and by Mr. Litchfield, for the defendant in error, under the 20th rule.

2nd January, 1866.

SAMUEL G. WOLCOTT, Plaintiff in Error,
vs.
THE DES MOINES NAVIGATION & RAILROAD CO. } No. 303.

On consideration of the motion made and affidavit filed in this cause on the 8th instant, it is now here ordered by the Court that leave be, and the same is hereby, granted counsel of the Dubuque & Sioux City Railroad Company to file and submit printed arguments in this cause at any time before the first day of March next.

13th February, 1866.

SAMUEL G. WOLCOTT, Plaintiff in Error,
vs.
THE DES MOINES NAVIGATION & RAILROAD CO. } No. 303.

On motion of Mr. B. C. Cook, leave granted him to file a printed argument in this cause by the first Monday of March next.

26th February, 1866.

61 December Term, 1866.

SAMUEL G. WOLCOTT, Plaintiff in Error,
vs.
DES MOINES NAVIGATION & RAILROAD CO. } No. 204.

Ordered by the Court that this cause be argued by counsel, if desired, with No. 133, when reached in the regular call of the docket.

Supreme Court of the United States. Dec. Term, 1866.

SAMUEL G. WOLCOTT, Plaintiff in Error,
vs.
THE DES MOINES NAVIGATION AND RAILROAD CO. } No. 204.

In error to the circuit court of the United States for the southern district of New York.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the southern district of New York, and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this Court that the judgment of the said circuit court in this cause be, and the same is hereby, affirmed with costs.

Per Mr. Justice Nelson.

13th of May, 1867.

Mr. Justice Miller took no part in the decision of this case.

True copies of docket entries, extracts from minutes, and judgment.

Test:

[SEAL.] D. W. MIDDLETON,
Clerk Sup. Court U. S.

Supreme Court of the United States. Dec. Term, 1865.

SAMUEL G. WOLCOTT
vs.
THE DES MOINES NAVIGATION AND RAILROAD CO. } No. 303.

The counsel for the plaintiff and the counsel for the de-
62 fendant hereby agree to submit, and do submit, this case upon printed arguments.

Dated December 18, 1865.

(Signed) J. W. GILBERT,
Of Counsel for Plaintiff.

(Signed) EDWIN C. LITCHFIELD,
Of Counsel for Defendant.

True copy. Test:
[SEAL.] D. W. MIDDLETON,
Clerk Sup. Court U. S.

Endorsed as follows: Stipulation to submit. Filed Dec. 21, 1865.

Supreme Court of the United States. December Term, 1865.

SAMUEL G. WOLCOTT, Plaintiff in Error,
vs.
DES MOINES NAVIGATION & RAILROAD COMPANY. } No. 303.

In error to the circuit court of the United States for the southern district of New York.

The Dubuque and Sioux City Railroad Company, a corporation, and by Wm. B. Allison, its attorney, now comes and moves the Court for leave to intervene in the above-entitled cause as a party thereto, and also for leave to file an argument in same for reasons set forth in affidavit filed herewith and made a part hereof.

DUBUQUE & SIOUX CITY
RAILROAD COMPANY,
(Signed) By WM. B. ALLISON, *Its Att'y.*

True copy. Test:
[SEAL.] D. W. MIDDTETON,
Clerk Sup. Court U. S.

Endorsed as follows: No. 303. Samuel G. Wolcott, pl'ff in error, *vs.* Des Moines Navigation and Railroad Company. Motion for leave to intervene on behalf of Dubuque & Sioux City Railroad Company. Filed 8th Feb'y, 1866. Wm. B. Allison.

63 Supreme Court of the United States. December Term 1865.

SAMUEL G. WOLCOTT, Plaintiff in Error,
vs.
DES MOINES NAVIGATION & RAILROAD COMP-NY.

In error to the circuit court of the United States for the southern district of New York.

I, James M. McKinley, on oath say that I am an attorney and counsellor at law, and am assistant attorney for the Dubuque &

Sioux City Railroad Company; that within the past few days, and not before, I have had an opportunity to examine the record in the above-named case; that, to my mind, the said record shows that the attorneys of said Wolcott either did not fully understand their case or the nature of the party opposed to them, or had been instructed not to litigate the case in good faith; that the question involved in said case is one on which depends the title which the Dubuque & Sioux City Railroad Company acquired to about seventy-seven thousand acres of land to aid in the construction of said road; that a final decision of the above-named case against the plaintiff in error would tend to greatly prejudice the said Dubuque & Sioux City Railroad Company, although they are not a party to the said case; that I have reason to fear the decision of the court below (near bottom of page 61 of the record) was obtained on substantially an *ex parte* presentation of the case, and is greatly prejudicial to the interest of the Dubuque & Sioux City Railroad Company, and is contrary to what would have been the decision on a proper presentation and argument of the case. And, as aforesaid, that an affirmance of the judgment of the court below would prejudice the title acquired by said Dubuque and Sioux City Railroad Company to said seventy-seven thousand acres of land and the title to their grantees.

(Signed) JAMES M. McKINLEY.

Subscribed and sworn to by James M. McKinley before
64 me, clerk of the district court of Dubuque, Iowa, February 1, 1866.

Witness my hand and official seal.

[SEAL.] (Signed) M. LEPPER, *Clerk.*

True copy. Test:

[SEAL.] D. W. MIDDLETON,
Clerk Sup. Court U. S.

Endorsed as follows: No. 303. Samuel G. Wolcott, plaintiff in error, *vs.* Des Moines Navigation & Railroad Company. Affidavit of James M. McKinley. Filed 8th February, 1866.

CI.—The Argument of Platt Smith in Behalf of the Dubuque & Sioux City Railroad Company in Wolcott vs. The Des Moines Navigation & Railroad Company.

Supreme Court of the United States. December Term, 1866.

SAMUEL G. WOLCOTT, Plaintiff in Error,
vs.
DES MOINES NAVIGATION & R. R. Co. Def'ts in Error.

Argument of Platt Smith, who intervenes in behalf of the Dubuque & Sioux City Railroad Company.

Both of these cases come up from the circuit court of the United States from the southern district of New York. They are both upon the same identical issues, and substantially upon the same state of facts. They are both suits brought against the Des Moines Naviga-

tion & Railroad Company to recover damages for alleged failure of title to certain lands in Iowa conveyed by the defendant below to the plaintiffs below by warranty deed. The plaintiffs below are citizens of the State of New York, and the defendant below is a citizen of Iowa.

The lands in dispute lie within five miles of the Des Moines river and above the mouth of the Raccoon Forks and in the alternate odd-numbered sections; and they also lie within the six and fifteen mile limits of the Dubuque & Sioux City Railroad Company, and are included in the act of Congress granting lands to Iowa, passed
65 May 15th, 1856. The Des Moines Navigation & Railroad Company claim title to these lands under an act of Congress, passed August 8th, 1856, granting lands to Iowa to aid in the improvement of the navigation of the Des Moines River, and under grants and deeds from the State of Iowa to said company, and also under a joint resolution of Congress passed March 2d, 1861, and under an act of Congress passed July 12th, 1862.

The Dubuque & Sioux City Railroad Company claim title to the same lands under an act of Congress passed May 15th, 1856, granting lands to Iowa to aid in the construction of certain railroads and grants from the State of Iowa to the Dubuque & Pacific Railroad Company and conveyances from said company to the Dubuque & Sioux City Railroad Company.

Three questions are raised by the records in these causes:

First. Did the act of Congress passed August 8th, 1846, grant the lands in dispute to the State (then Territory) of Iowa for the purposes specified in the act?

Second. Did the act of Congress of May 15th, 1856, grant the lands in dispute to the State of Iowa for the purpose specified in said act, and did the act vest the title to said lands in dispute in the State of Iowa, or were the lands in dispute reserved to the United States, so that said act of May 15th, 1856, did not operate to vest them in the State of Iowa?

Third. Did the joint resolution of Congress passed March 2d, 1861, or the act of July 12th, 1862, pass the title to the lands in dispute to the State of Iowa and through said State to the Des Moines Navigation & Railroad Company?

The first question was brought directly before this court in the case of The Dubuque & Pacific Railroad Company *vs.* Litchfield, and is reported in 23 Howard, 66.

The court, in an elaborate opinion, held that the act of August 6th, 1846, did not grant to the State of Iowa any lands above the
66 mouth of Raccoon Forks, and that the Des Moines Navigation & Railroad Company, under whom Litchfield claimed title, had no title to the lands in dispute. That decision must be a finality as far as the construction of that act is concerned. Yet the said Des Moines Navigation & Railroad Company have been making continued attempts to overturn that decision. The defendant Litchfield was the president of that company about the time of that decision. (See record, page 5, in the Samuel G. Wolcott case, now on hearing.) The judgment entered in the circuit court of Iowa upon the man-

date of this court was set aside, and it required the peremptory mandamus of this court to have the judgment stand as the judgment of said circuit court. (Dubuque & Pacific Railroad Company, *ex parte*, 1 Wallace, 69.) A suit was then brought in circuit court of Iowa by Calvin Burr against said Des Moines Navigation & Railroad Company, involving the title to a portion of the same lands as in the present suit, and the case submitted upon an agreed statement of the evidence. This case is recorded in 1st Wallace, 99. The Dubuque & Sioux City Railroad Company intervened in that case in this court and the case was dismissed.

It is clearly for the interest of the plaintiffs below in these cases to have the defendant obtain judgment on the question of title, for then they would hold their lands under their deeds. It is also to the interest of the defendant below to succeed, for if it can now succeed in procuring from this court an opinion that the title to the lands in dispute is valid it will give it some one hundred thousand acres of land now held by the Dubuque & Sioux City Railroad Company.

This very readily accounts for the reason that the defendant in the court below should voluntarily go to the State of New York and enter to an appearance to suits there, where it might be out of the way of the interference of the Dubuque & Sioux City Railroad Company.

The records in these cases show that there is no real contest between these parties to the suit, but that the real litigant
67 against both parties is the Dubuque & Sioux City Railroad Company. The other railroad companies interested in the lands granted in the act of May, 1856, which cross the Des Moines above the Raccoon Forks, are also interested in the questions involved.

The second question can only be answered in the affirmative. The act itself vested the title to the lands therein described in the State of Iowa. Its language is, "That there be, and is hereby, granted to the State of Iowa, for the purpose," etc. This is a present grant. The particular lands granted are made certain by the location of the line of the road, and all the estate of the United States passed by the act itself to the State of Iowa. We refer to a few of the authorities on this point, as it seems so well settled as to be beyond dispute. (United States *vs.* Brocks, 10 Howard, 442; Lassieur *vs.* Price, 12 Howard, 59; Dubuque & Pacific Railroad Company *vs.* Litchfield, 23 Howard, 66.)

In this last case the court, speaking of the act of August 8th, 1846, where the granting clause is the same language as the act of May 15th, 1856, used the following language: "The act of Congress was a direct grant to Iowa, in fee, of the undivided moiety of the whole tract on each side of the river from the Raccoon Forks to the Missouri line. Congress had the undoubted power to make the grant and vest the fee." The record in the case of S. G. Wolcott, page 46, shows that said road was located on the 27th day of September, 1856, and the lands in dispute lie within the six-mile limit of the line of said road and the alternate odd-numbered sections. On the 14th

day of July, 1856, the General Assembly of Iowa passed an act granting all the lands included in the act of May 15th, 1856, to aid in the construction of the railroad from Dubuque to a point on the Missouri river, at or near Sioux City, to the Dubuque & Pacific Railroad Company. The granting part is in the following language: "Are hereby disposed of, granted, and conferred to and upon the Dubuque & Pacific Railroad Company," etc. This is a grant *in presenti*, and vested the title to the lands in said company.

68 Upon the location of the line of said road the title in the particular lands vested, and the United States had no remaining interest in them. On the 9th day of July, 1857, said company conveyed the lands in dispute, by deed of trust, to certain parties to secure bonds to be issued for the construction of the road, and on the — day of November, 1863, said Dubuque & Sioux City R. R. Company (which had become vested with the right and title of the Dubuque & Pacific Railroad Company in said lands) conveyed the same to George J. Forrest and others.

It is now claimed that the proviso to the first section of the act of May 15th, 1856, excepted the lands claimed by the Des Moines Navigation & Railroad Company from the operation of this grant. That proviso is as follows: "And provided further, That any and all lands heretofore reserved to the United States by an act of Congress, or in any other manner by competent authority, for the purpose of aiding in any objects of internal improvements or for any other purpose whatever, be, and the same is hereby, reserved from the operation of this act," etc. It is not claimed that any act of Congress had reserved the lands in dispute to the United States, unless the decision in the case of The Dubuque & Pacific Railroad Company *vs.* Litchfield, 23 Howard, is erroneous and is to be overruled; but it is claimed that these lands were reserved to the United States by certain executive officers of the Government, and that the joint resolution of March 2nd, 1861, and the act of Congress of July 12th, 1862, vested these lands in the State of Iowa, and through it in said Des Moines Navigation & Railroad Company. The above proviso requires that the reservation be to some legal purpose and by competent authority. The only purpose claimed for such reservation was to aid in the improvement of the Des Moines river, but this court held in the above case, in 23 Howard, that the lands in dispute were not reserved, and that no right in or to them passed by the act of August 8th, 1846. No reservation had been made by competent authority. The evidence set out in the record shows that

69 prior to the act of May 15th, 1856, the proper executive officers of the Land Department of the United States had construed the act of August 8th, 1846, as a grant extending above the mouth of the Raccoon Forks, and as including the lands in dispute; that the lands in dispute had been selected as within said grant, and that such selections had been approved by the proper executive officers of the United States. If these officers had the authority to make a reservation within the aforesaid proviso, and did make such reservation, then the Dubuque & Sioux City Railroad Company has never had any title to the said lands.

The absolute power and the right of disposition of the public lands of the United States is in Congress; no such right exists in any of the officers of the Government, unless specially conferred for some particular purpose by act of Congress. The only authority conferred by act of Congress is the act of August 8th, 1864, and this court has held that no right of reservation was conferred upon such officers by that act. In the case of 23 Howard, above quoted, the court says: "No authority was conferred upon the executive officers administering the public lands to do more than make partitions between the tenants in common, Iowa and the United States, in the manner prescribed by Congress. The premises in dispute lie sixty miles beyond the limits of the trusts granted. It was, therefore, impossible to make partition under this grant of lands lying outside of its boundaries, and all attempts to do so were merely nugatory." These officers never claimed or professed to reserve these lands to the United States by any right in themselves to do so, but only for the purpose of carrying into effect the act of August 8th, 1846. These officers have power to offer for sale and to suspend from sale the public lands of the United States as prescribed by law, but no authority is conferred upon them to reserve the public lands for any particular uses. On the 1st of June, 1849, the officers of the land office at Iowa City were directed to withhold from sale the
70 lands in dispute. (See record in the Wolcott case, page 12).

These executive officers withheld these lands from sale, not as a reservation, but temporarily, till the construction of the act could be judicially decided. (See same record, pages 14 and 15, 26 and 37). On the 10th day of May, 1856, just before the act of May 15, 1856, was passed, all the land officers in Iowa were directed to suspend from sale all the lands in the several land districts. If a simple withholding of lands from sale or suspension of lands from sale by the executive officers is a reservation to the use of the United States for a particular purpose, then the State of Iowa acquired no title to any lands in Iowa or it acquired the title to all the lands in said land office districts, for all the lands were reserved from sale. We therefore insist that no reservation of the lands in dispute had been made by competent authority, and that the title to the lands vested in the State, and that no act of the executive officers, or even of Congress, could divest the State of Iowa of such title after the acceptance of the grant by the State.

Third. We further claim that under the last question no title to the lands in dispute passed to the State of Iowa under the joint resolution of 1861 or the act of Congress of July 12th, 1862, for the reason that the United States had no title to grant.

It had already divested itself of the title by the act of May 15th, 1856. No title could pass from the State of Iowa under the act of July, 1862, for the reason that a grant by a State is not a warrantee, and a subsequently acquired title does not inure to a grantee from a sovereign power. "Grants made by a Legislature are not warrantees, and the rule universally applied in determining their effect is that if the thing granted was not in the grantor at the time of

the grant no estate passed to the grantee." (Brice vs. Railroad Company, 1 Black., 374.)

All the questions involved in these cases seems to have been fully settled by the prior adjudication of this court, and we trust that the decision in these cases will end litigation in regard to the title of these lands.

PLATT SMITH,
For Intervener.

71 Defendant then read from the deposition of John B. Thompson, filed Nov. 17, 1881, as follows:

I have sustained no official or business relation with the Dubuque & Sioux City Railroad Company, except that I have been a stockholder; I was the secretary and treasurer of the Iowa Homestead Company during its existence—from 1864 to June, 1873.

I don't know anything about Mason Thompson's connection with the Dubuque & Sioux City Railroad Company; I know there is such a man as Mason Thompson; I do not know in respect to his connection with the railroad company referred to in the question.

The homestead company had its regular board meetings as long as I was connected with it—up to June, 1873; I know of no meetings, independent of the board meetings, after 1873.

Soon after Jesup became president of the Dubuque & Sioux City Railroad Company, the railroad company became owner of five-ninths of the stock of the homestead company, and after such change of ownership of the stock there was a new board of directors made of the homestead company; Morris K. Jesup, D. Willis James, J. Pierpont Morgan, and J. A. Roosevelt, George J. Forest, Edward Stimpson, and Isaac H. Knox were directors in the companies.

The railroad company owned a majority of the stock of the homestead company since the year 1866; I cannot say exactly what date; it was soon after the time that Morris K. Jesup became president of the railroad company; it might have been within two months or within a year after that date.

By owning a majority of the stock they controlled the homestead company, and they worked harmoniously with our board.

I know that after Jesup became president of the railroad company all stock of the homestead company held by the direct-
72 ors of the railroad company was transferred to the railroad company, amounting to five-ninths of the whole stock; I think it was within a year afterwards, but am not positive. In June, 1873, I sold the railroad company my stock—560 shares—and took the Dubuque & Sioux City Railroad Company's notes, payable in one, two, three, and four years, and as secretary of the company I can say they purchased at the same time the balance of the stock that was held by other stockholders, other than the railroad company, on the same terms. As to how much of the stock was owned by the railroad company on the 1st of October, 1868, I cannot answer, for the reason that I cannot fix the time when Jesup became

president, and by whom the stock has been held since June, 1873; I cannot answer except as above.

Soon after Jesup became president there was transferred to the railroad company five-ninths of the entire stock of the homestead company, and in June, 1873, as before stated, the railroad company purchased from me and other owners the balance of the stock, making the entire stock of the homestead company; I think it was shortly after Jesup became president.

Q. State whether or not there was an agreement between said railroad company and said homestead company that, in case of failure of the title to the Webster county lands purchased by the latter of the former, that the railroad company would pay back to the homestead company the original cost, with ten per cent. interest thereon; and, if so, whether or not any record or memoranda of such agreement was or should have been recorded in the books of both or either of said companies; and if so, in what book or books.

A. There was an agreement to that effect amongst the Iowa Homestead Company's papers; I don't think it was recorded in any book at all.

Q. Is it or is — not true that said railroad company paid the costs and expenses of the litigation in the case of the Iowa Homestead Company against the Des Moines Navigation & Railroad Company, commenced in the district court of Webster county, Iowa, in October, 1868, and taken by appeal to the Supreme Court of the United States to settle the question of title as to said Webster county lands? State fully all you know with respect to the payment of said costs and expenses, whether paid in full by said railroad Co. or jointly by said railroad company and said homestead Co.; and, if jointly, in what proportion the same were paid by them; and state further whether or not the matter of the payment of said costs and expenses, or provision therefor, was considered or discussed at any meeting of the board of directors of either of said companies at which you were present; and, if so, state whether or not both of said companies were represented at such meeting; and, if not both, whether or not said railroad company was represented at such meeting.

73

A. I cannot answer whether they paid them or not. They agreed to defend the title. The Iowa Homestead Company never paid a dollar of the expenses. It was never discussed at the Iowa Homestead Company's meetings, and I know nothing about what was done in the railroad company's meetings. I have already stated that the railroad company owned a majority of the stock of the homestead company, and we were working harmoniously.

From W. J. Barney's deposition, as follows:

I was land agent for the Iowa Homestead Co. from its organization up to some time in 1873. I have had no official relation at any time with the Dubuque & Sioux City Railroad Company.

Q. State whether or not you had, at the time of and previously to the commencement of the suit in the district court of Webster county, Iowa, by the Iowa Homestead Company against the Des Moines Navi-

gation and Railroad Company and others for the purpose of trying the title to certain land lying in Webster county, Iowa, claimed by said companies, respectively, and in which said homestead company
74 sought as alternative relief the recovery of certain taxes paid by said homestead company, knowledge of the fact that said suit was or was to be commenced.

A. I had nothing to do with the suit mentioned, although I think it was mentioned to me that such suit would be brought. I neither directed nor participated in the direction of said suit. I don't recollect now exactly who were the officers of the Iowa Homestead Company at the time, but believe they were Morris K. Jesup, president, and John B. Dumont, secretary and treasurer. As to the directors, I have forgotten who they were. As to the officers of the railroad company, cannot say.

I don't think the Iowa Homestead Company paid taxes for 1861, '2, and '3. I think I paid all their taxes, and my accounts don't show that I paid such taxes for them.

From the deposition of George Crane, as follows:

Int. 14. Do you know whether or not the books of the D. & S. C. R. R. Co. contain any evidence now with respect to the payment of taxes on the lands in controversy in this suit?

Ans. I think they do for a certain year. The only year I looked for was a payment in 1866.

I have been the attorney of the plaintiff in this case since 1875 or 1876—possibly since 1874.

My correspondence was not with him, Goodnow, with respect to my employment in the first instance. I think it was with Dumont.

Int. 30. State whether or not you, either by correspondence or orally, communicated with Dumont on the subject before the date of the assignment from the homestead company to plaintiff Goodnow of the cause of action in this suit.

Ans. It is possible I did. I do not know how or when. I cannot recollect when the subject was first talked of without refreshing my memory. Dumont acted for my client; may possibly have had a conversation with him before the assignment was made. It may have been before my present client, Goodnow, so far as I
75 know, had any interest at all in the subject-matter of this present litigation. I presume it is true that it was before the assignment to him. What interest, if any, he had before that I don't know.

Int. 63. State whether or not your conversation with him, Dumont, related to both assignments, and whether or not in that communication, whatever its character was, he represented both companies.

A. I think we talked about the taxes for all the years. I cannot say that he represented either company as a matter of fact, only we talked over the subject-matter of the recovery of those taxes, and if he was acting for the company—that is, representing the company—I did not know it.

From George J. Forest's deposition, as follows:

I have been a stockholder in the Dubuque & Sioux City Railroad Company for many years. I have no interest in its property to-day. I was not a director. I or my firm were stockholders in the homestead company, and I have been told that I was a director and an officer. I have no distinct recollection of my official capacity in the company.

Q. State whether or not you had, at the time and previously to the commencement of the suit in the district court of Webster county, Iowa, by the Iowa Homestead Company against the Des Moines Navigation and Railroad Company and others for the purpose of trying the title to certain lands lying in Webster county, Iowa, claimed by said companies, respectively, and in which said homestead company sought as alternative relief the recovery of certain taxes paid by the said homestead company, knowledge of the fact that said suit was or was to be commenced.

A. I have no recollection of any such suit.

Q. State whether or not if you were present when the assignment by either said homestead company or said railroad company
76 to Goodnow was made; and, if so, whether said Goodnow was present, and when were said assignments or either of them made.

A. I was not present; I do not know whether Goodnow was present or not.

Q. State whether or not you arranged with said Goodnow for the making to him of either of said assignments; and, if so, state whether the same was done orally or by correspondence, and what interest, if any, said Goodnow has in the claims so assigned to him or either of them.

A. I did not.

Q. State by what authority the assignment of the cause of action herein to the plaintiff Goodnow was made; whether or not it was authorized at and by any meeting of the stockholders, directors, or of any committee of the assignor; and, if so, by which and when, and where was such meeting held and who composed the same?

A. I know nothing about it.

From Mason Thompson's deposition, as follows:

I am a director of the Dubuque & Sioux City Railroad Company. I have been connected with such direction four or five years. I am also a director of the Iowa Homestead Company, and have been so during the same period. I acted as president *pro tem.* of that company for a short term during the absence of the president. The board of directors of the Iowa Homestead Company have not held any separate meetings as such, and the directors of both companies are the same persons. I understand that the railroad company owns a majority of the stock of the homestead company, and has controlled its affairs ever since my connection with the company, and, as the railroad company own the lands, any discussion in regard to them or any matters in reference to the homestead company

have been had at the meetings of directors of the Dubuque and Sioux City Railroad Company.

77 Q. State whether or not you had, at the time of or previously to the commencement of the suit in the district court of Webster county, Iowa, by the Iowa Homestead Company against the Des Moines Navigation & Railroad Company and others for the purpose of trying the title to certain lands lying in Webster county, Iowa, claimed by both companies, respectively, in which said Iowa Homestead Company sought as alternative relief the recovery of certain taxes paid by said homestead company, knowledge of the fact that said suit was or was to be commenced.

A. I do not know anything about any of these matters of eight years ago.

Q. State where the plaintiff, Edward K. Goodnow, resides, and what official or other business relation, if any, he sustains to the said homestead or said railroad company.

A. He is a partner of Mr. Jesup, who is president of the Dubuque & Sioux City Railroad Company, and has an office with him. I do not know where he resides. I do not know that he is officially connected with either of said companies. I know he is not an officer or director of either of said companies.

Q. State whether or not you were present when the assignment by either said homestead company or said railroad company to Goodnow was made; and, if so, whether said Goodnow was present, and when and where were said assignments or either of them made.

A. I know nothing in respect to the matters inquired of.

Q. State by what authority the assignment of the cause of action herein to the plaintiff Goodnow was made; whether or not it was authorized at and by any meeting either of the stockholders, directors, or any committee of the assignor; and, if so, by which and when, and where was such meeting held and who composed the same?

A. I know nothing in respect of matters so inquired of and cannot answer that question.

78 Q. State, if you can, which of said companies, the homestead company or the railroad company, furnished the money in the first instance with which the taxes on said Webster county lands for the years 1861, '62, and '63 and each thereof were paid, and whether or not the same was so furnished for the use of the company so furnishing the same; and, if not, for whose use was it furnished, and what adjustment, if any, was subsequently made with respect thereto?

A. I have no personal knowledge in respect to this matter inquired of. The matter, however, has been talked over at the meetings of the board when I was present, and I understood from these conversations that the matter was referred to the officers for them to bring suit and to take whatever measures were necessary. I supposed the taxes had been paid, and these suits were for the purpose of recovering them back. This occurred in the meeting of the board of directors of the Dubuque & Sioux City Railroad Company. These conversations referred to have occurred within the last three or four years.

From John B. Thompson's deposition, filed November 19th, 1881:

I have never had any connection with the Dubuque & Sioux City Railroad Company. I was, however, secretary and treasurer of the Iowa Homestead Company from 1864 to 1873.

Q. State whether or not you had, at the time of and previously to the commencement of the suit in the district court in Webster county, Iowa, by the Iowa Homestead Company against the Des Moines Navigation Company and others for the purpose of trying the title to certain land lying in Webster county, Iowa, claimed by said companies, respectively, and on which said homestead company sought as alternative relief the recovery of certain taxes paid by said homestead company, knowledge of the fact that said suit was *and* was to be commenced.

79 A. I have no knowledge of there being any disputed title to the lands. I cannot now recollect whether I had knowledge of the fact that such suit was or was to be commenced.

Q. If, in answer to the last interrogatory, you say you had knowledge of the suit therein referred to at the time of its commencement, state whether or not you directed or participated with others in directing its commencement; and, if so, state the names of all the officers of said homestead company and said Dubuque & Sioux City Railroad Company, as far as you can remember, with whom you consulted about the commencement of the same before it was commenced.

A. I cannot answer clearly. I suppose it must have been by action of the board directing the secretary and treasurer to bring the suit. Not having the books I cannot make any references to them. I know that there were no entries on our books for taxes of 1861, 1862, and 1863. The Iowa Homestead Company paid the taxes regularly from 1864 up to 1873, when my connectio nwith the company terminated. I cannot answer where they (the tax receipts) are now. I gave them up in 1873 to the Dubuque & Sioux City Railroad Company. I think there were no taxes paid by the homestead company to my recollection from 1859 till 1864.

I only know him (the plaintiff, Edward K. Goodnow) as a partner of Morris H. Jessup & Co. I do not know him in connection with either of these companies.

I know nothing about the assignment of the claim sued upon to plaintiff, and was not present when it was made; don't know by what authority it was made.

The Iowa Homestead Company held a warrantee deed from the Dubuque & Sioux City Railroad Company, and in addition they held an agreement that they (the railroad company) would defend the title at their own expense, which they did.

80 From Morris K. Jesup's deposition, as follows:

I am president of the Dubuque & Sioux City Railroad Company, and have been since the early part of 1866. I have no relations with the Iowa Homestead Company officially, and never have had.

Who on behalf of said railroad company had the chief control

and direction of said suit, and who employed, consulted with, and generally gave instructions to the attorneys who had charge of it?

I am president, and I presume if any directions were given I must have given them; I do not know.

He (Edward K. Goodnow, the plaintiff) resides in Brooklyn. I am not aware that he sustains any official relations with either the land company or the railroad company.

Q. State whether or not you were present when the assignment by either said homestead company or said railroad company to Goodnow was made; and, if so, whether said Goodnow was present, and when were said assignments or either of them made.

A. I do not recollect anything about it.

Q. State whether or not you arranged with said Goodnow for the making to him of either of said assignments; and, if so, state whether the same was done orally or by correspondence, and what interest, if any, said Goodnow has in the claims assigned to him or either of them.

A. Not that I remember; I have no recollection of any arrangement between Mr. Goodnow and the Iowa Homestead Company or the railroad Co. at all.

Q. State by what authority the assignment of the cause of action herein to the plaintiff Goodnow was made; whether or not it was authorized at and by any meeting, either by the stock holders,
51 directors, or any committee of the assignor; if so, by which and when and where was such meeting held; who composed the same?

A. I have no recollection of anything of the kind; I presume, however, if anything of the kind was done it was done by the board of directors; I remember nothing about it.

I do not remember of any record of the proceedings authorizing said assignment having been made.

From J. B. Dumont'- deposition, as follows:

I have been assistant secretary of the Dubuque & Sioux City R. R. Co. since some time in 1864, and treasurer since some time in June, 1876 and secretary of the Iowa Homestead Company since some time in 1873.

Q. State whether or not at any time during the years 1874, 1875, and 1876 you had a conversation with George Crane, Esq., at the city of Dubuque, Iowa, with respect to the commencement of a suit or suits for the recovery of the taxes or any part of them paid by the Iowa Homestead Company and said railroad company from the year 1859 to the year 1872, both inclusive, or either of them; if so, state what was said in said conversation about assigning the claims, respectively, of said companies, or either of them, to Mr. Edward K. Goodnow or to any other person, that the same might be sued in name of the assignor.

A. I have no recollection of any such special conversation; Mr. Crane was counsel of the Dubuque & Sioux City Railroad Company, and it is not unlikely that I had some conversation with him; I do not remember what was said. The plaintiff Goodnow resides in

Brooklyn, N. Y., and sustains no official or business relations with either company. I do not remember being present when the assignments were made; I do not know whether he (Mr. Goodnow) was present or not; I do not remember when they or either of them were made.

82 Q. State by what authority the assignment of the cause of action herein to the plaintiff Goodnow was made; whether or not it was authorized by any meeting either of the stockholders, directors, or of any committee of the assignor; and, if so, by which, and when and where was such meeting held, and who composed the same.

—. The records of the company are in Dubuque; I do not know; I cannot state by what authority. I cannot state whether any such record of the proceedings authorizing said assignment was made, as the records of the company are in the Dubuque office.

The plaintiff then offered in evidence the original assignments.

They were objected to by defendants because—

1. There is no evidence of the authority of the officers by whom it purports to have been executed to execute the same.

2. There is no evidence of the execution of the same by the officers.

3. There is no certificate of acknowledgment as to the assignment relied upon in this case.

—. The assignment purports to have been made in the State of New York by an Iowa corporation, and no authority is shown for them to transact business outside of the territory creating them.

5. For the reason that the instrument shows it was executed long after the suits were commenced, and there is no evidence that the assignments were ever delivered by the railroad company to the plaintiff.

The assignment, a copy of which is attached to the plaintiff's petition and marked Exhibit "B," was read in evidence.

Plaintiff then read in evidence a duplicate of the assignment attached to said petition and the following acknowledgement thereof:

83 STATE OF IOWA, *New York City and County:*

On this 8th day of April, A. D. 1881, before me, a notary public in and for said county, personally came M. K. Jesup, president of the Dubuque & Sioux City railroad, and John B. Dumont, secretary of said company, to me personally known to be the identical persons whose names are affixed to the above instrument as grantors and as officers of said company, and acknowledged the same to be their voluntary act and deed and the voluntary act and deed of said railroad company for the uses and purposes therein mentioned.

Witness my hand and notarial seal.

[NOTARIAL SEAL.] J. C. FRENCH,
Notary Public, King's County.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *October* 1, 1860.

SIR: In reply to your letter of the 29th ultimo, I have to inform you that a letter was addressed to the Commissioner of the General Land Office on the 6th of that month, which was responsive to your application of the 26th June last for the certification of lists of certain lands to the State of Iowa under the grants for aid in constructing railroads in that State.

A copy of my letter is now enclosed with the remark that in the reports of the Commissioner of the General Land Office of the 7th of July and 3d of September therein referred to it is not stated whether the lands which you desire to have listed under the railroad grant are or are not in whole or part such as have already been certified to the State erroneously under the grant for the improvement of the Des Moines river. I make this remark deeming it probable that the Commissioner's objections, as my own, have been chiefly restricted to lands that have been heretofore erroneously certified and not to all that have been illegally claimed under the Des Moines grant.

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

84 WASHINGTON, *September* 26, 1860.

Hon. Joseph S. Wilson, Commissioner General Land Office.

SIR: Understanding that the Hon. Secretary of the Interior hesitates to comply with my requests of the 26th of June last for the approval of the Des Moines river lands in Iowa enuring to the railroads because it does not appear that the Governor has requested the same, I beg leave to state that the duly authorized agent of the Governor (Mr. Henn), as you are personally aware, did request that these lands should be approved to the roads, and that on Mr. Henn's leaving Washington I had full power to act in his stead, which I have since done, and my acts have been recognized. I am likewise authorized by the several companies, the assignees of the State, to do this specific act as well as others.

I make the above statements in order to guard against errors and to disabuse the mind of the Secretary on the point mentioned, and through you, under the circumstances, respectfully renew my previous request.

Very respectfully, your obedient servant,

WM. T. STEIGER,
Agent, etc.

WASHINGTON, *June* 26, 1860.

Hon. Jacob Thompson, Secretary of the Interior.

SIR: Immediately after the recent adverse decision of the Supreme Court of the United States on the Des Moines river claim to lands above the Raccoon Forks in the State of Iowa, as the agent of two of the railroads I filed in the General Land Office lists of selection of the interfering lands thus enuring to the roads in order that they might be approved and certified in the usual form.

The Commissioner of the General Land Office, in acknowledging the receipt of the lists, informed me that the matter, alluding to the Des Moines river conflicting claim, having been placed in train for congressional intervention no action could be taken at present upon my application.

85 Since the adjournment of Congress I have taken particular pains to ascertain what, if anything, has been done, and find that the Committee on Public Lands of the Senate, before whom this matter was pending, have taken no further action upon it since your communication to them of the 11th instant. It will, therefore, under the general rule adopted by the Senate relating to unfinished business, be carried over to the next session.

The difficulty of reporting at the present session, as far as I can learn, had no reference to the rights of the railroads, or doubts as to the correctness of the view expressed by the Department on the 11th instant, that since the decision of the Supreme Court those rights can no longer be called in question, and that they thus save the lands to the State, but whether or not it would be proper or expedient to recommend a grant of lands in addition to those already granted, and, if so, to what extent, as proposed in the resolution substituted by the Department and the several bills and resolutions before the committee having a similar object.

As these lands, for the cause mentioned, have been held suspended from the commencement of the adjustment of the railroad grants, more than three years ago, to the serious disadvantage of the railroad companies, and it is now admitted that there can be no question as to the right of the State to them, under the act of May 15th, 1856, I most respectfully but earnestly request that there may be no further delay in certifying the proper lists to the State and the railroad companies in order that the latter may at once avail themselves of the aid and benefit derived from them in the prosecution of their respective works, as intended by the original grant.

As an additional reason for granting my requests, I beg leave to suggest that if delayed for legislation of Congress at its next session, even should expectation of relief not then be disappointed, it would postpone any final action until after the 4th of March, or

86 to the next administration; how much longer no reasonable calculation could be made, as it is fair to presume that the new officials would require some time to acquaint themselves with all the facts. This course, if followed, would be as ruinous as it would be unjust to the railroad companies, who are firmly bound to the State, and through it to the United States, for the faithful performance of all the conditions of the grant, including the completion of the roads in the time specified. Besides, whatever the future legislation of Congress may be, it would undoubtedly save our vested rights in the lands, and therefore not interfere with the approval now asked of the Department.

I am, with great respect, your obedient, servant,

WM. T. STEIGER, *Agent, etc.*

Endorsed:

DEPARTMENT OF THE INTERIOR, *June 28th*, 1860.

Respectfully referred to the Commissioner of the General Land Office for report.

MOSES KELLY,
Chief Clerk.

Commissioner Wilson to Secretary Thompson, September 3rd 1860.

GENERAL LAND OFFICE, *September 3rd*, 1860.

Hon. J. Thompson, Sec. of Interior.

SIR: I have the honor to return herewith the communication from W. F. Steiger, Esq., of the 10th July last, relative to his application for the certification of certain lands above the Raccoon Forks of the Des Moines river to the Iowa railroads, and respectfully state that we find no reason therein for a change of our recom-
87 mendation of the 7th July last; that further proceedings in the matter by the Department be delayed until after the close of the next session of Congress.

Very respectfully, your obedient servant,

JOS. S. WILSON,
Commissioner.

Secretary Thompson to the Commissioner of the General Land Office, September 6th, 1860.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *Sept. 6th*, 1860.

SIR: In the absence of any direct application by the Governor of the State of Iowa for final action in the certification of certain lands common to the claimed limits of the grant to that State for the improvement of the Des Moines river, and the grants for aid in constructing railroads, my opinion is that it will be proper, as you suggest, to delay action until after the close of the next session of Congress.

The papers enclosed with your letter of the 7th of July last and 3d instant are now returned.

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

GEORGE CRANE, being sworn, testified as follows:

I am rather familiar with the handwriting of Morris K. Jesup. I was not present when the assignment was executed.

My judgment would be that the signature is in the handwriting of Morris K. Jesup.

I am not positive whether the assignment was transmitted to Mr. Jesup by me or not; I think I received it back from him; I do not recollect now of having any correspondence with Mr. Jesup upon the subject of the assignment.

The foregoing is all the evidence introduced or used by the parties in this suit or either of them at the trial or hearing thereof.

88 After due consideration the court rendered the following decree:

This cause coming on for final hearing, and the court having heard the evidence of the parties and the argument of counsel upon the merits of the case, and finding the issues for the defendant, it is hereby ordered and decreed that the plaintiff's petition be dismissed, and that the defendant have judgment against the plaintiff for the costs of suit, taxed at —, and that he have execution therefor; to which the plaintiff accepted.

And afterwards the plaintiff Goodnow gave due notice and perfected his appeal from the decision of said circuit court to the supreme court of Iowa, and the said defendant Stryker consented in the form required by law that such appeal should be taken to Dubuque, Iowa, at the April term, 1882, thereof.

GEORGE CRANE,
Attorney for Appellant.

Assignment of Errors.

1. The court erred in dismissing the plaintiff's petition.
2. The court erred in not finding the issues for the plaintiff.
3. The finding of the court is contrary to the law and the evidence in the case.
4. The finding or decision of the court is not in accordance with the law or the equity of the case.
5. The evidence shows that plaintiff was entitled to a decree for the taxes paid by his assignor, and interest thereon.

GEORGE CRANE,
Attorney for Plaintiff.

89 Said abstract is endorsed as follows:

"Rec'd copy of this abstract this — day of April, A. D. 1882.
THEO. HAWLEY,
Att'y for Def't."

"It is hereby stipulated and agreed that the abstracts hereto annexed, being the abstract of the appellant & also the abstract of the appellee in this suit, contain all the evidence introduced by both parties at the trial of the cause in the circuit court, and that this suit may be submitted and tried upon said abstracts by the supreme court of Iowa.

Signed this — day of April, A. D. 1882.

GEO. CRANE,
Att'y for Pl'ff.
THEO. HAWLEY,
Att'y for Def't."

90 On the 1st day of May, 1882, the pl'ff in error (def't and appellee in Iowa sup. court) filed in the office of the clerk of the supreme court of Iowa an additional abstract, the same, with endorsements thereon, being in the words and figures following, to wit:

91 *Appellee's Additional Abstract of Record.*

Supreme Court of Iowa. June Term, 1882.

EDWARD K. GOODNOW *vs.* JOHN STRYKER.

Appeal from Webster circuit court.

George Crane, for appellant; Theo. Hawley and C. H. Gatch, for appellee.

The appellee, deeming the abstract prepared by the appellant imperfect, files the following additional abstract in this case:

On the trial of this cause in the court below the plaintiff read in evidence from the printed transcript of the record in the Supreme Court of the United States in the case of the Iowa
92 Homestead Company against the Des Moines Navigation and Railroad Company and others, referred to in the agreed statement of facts, the bill of complaint, in the words and figures following:

THE IOWA HOMESTEAD COMPANY

vs.

THE DES MOINES NAVIGATON AND RAILROAD COMPANY and Others.

To the district court of the county of Webster, in the State of Iowa:

The petition of the Iowa Homestead Company and others —:

1. That said company is a corporation duly created by the laws and a citizen of the State of Iowa for the purpose of buying and selling lands in said State; that said plaintiffs, by deed of purchase, beginning the 12th of Nov., 1863, acquired by and through the Dubuque & Sioux City Railroad Company all the right of said company, the Dubuque & Pacific Railroad Company, and the State of Iowa to about fifty thousand acres of land lying on the east side of the Des Moines river, in Webster and Humboldt counties, Iowa, being the odd sections of land within the limits of the Dubuque & Pacific railroad grant of 1856 and the Des Moines river grant of 1846. A copy of the said list of lands is hereto annexed and made part of this bill; and by said deeds and certificates the plaintiffs acquired a title to about twenty thousand acres of land in the odd sections within said grants in Webster and Hamilton counties west of said Des Moines river, a list of which is hereto annexed and made a part of this bill. Of these lands the fifty thousand acres lying east of the Des Moines river are claimed by the Des Moines Navigation and Railroad Company, a corporation created by the laws of Iowa, and its assignees; and some title or claim to twenty thousand acres

of land on the west side of the river is or has been made by the Des Moines Valley Railroad Company, a corporation created by and a citizen of the State of Iowa.

2. That on the 8th of August, 1846, by an act of Congress,
93 a grant of land was made to the Territory of Iowa of alternate sections of land within five miles of the Des Moines river in said State to improve the navigation from its mouth to the Raccoon Forks, said land to be selected within said Territory by an agent to be appointed by the Governor, subject to approval by the Secretary of the Treasury of the United States; said lands to become the property of the State when admitted into the Union, which event occurred about a year after. On the 17th of October, 1846, the Governor of the Territory of Iowa was notified by letter from the Commissioner of the Land Office "that under the grant the Territory of Iowa was entitled to the vacant lands in alternate sections within five miles on each side of the Des Moines river from the northern boundary of Missouri to the Raccoon Forks." The territorial and State authorities acquiesced in the opinion expressed in this letter, and an agent was appointed to make selections and he did make the selections below the forks of the Raccoon. No question arose as to the further extent of this grant until nearly two years thereafter. On the 24th of February, 1847, the State of Iowa appointed a board of public works to improve the navigation of said river. In a letter to the secretary of this board, dated February 23, 1848, R. M. Young, Commissioner of the General Land Office, after answering a letter to him on other subjects, says: "A question has arisen as to the extent of the grant to Iowa under act of August 8th, 1846, and the opinion of this office requested.

"The grant is of one equal moiety in alternate sections, and on each side of said river, to be selected within said Territory, &c., the proceeds to be applied to improve the navigation of the river from its mouth to the Raccoon Forks. Hence the State is entitled to the alternate sections within five miles of the Des Moines river throughout its whole extent within the limits of Iowa."

On the 19th of June, 1848, a proclamation was issued by the President, and countersigned by said Young, ordering into market
some of the lands in the odd sections above the Raccoon
94 Forks, which, under the expressions of the letter of February 23, belonged to the State.

The board of public works in Iowa protested against this, but no notice was taken of it by said Young. On the 8th of January, 1849, the delegation from Iowa in Congress called the attention of the Secretary of the Treasury to the constructions of the act of August 8, 1846, and claimed the alternate sections of land on the said river above the forks of the Raccoon. The Secretary of the Treasury, R. J. Walker, in reply to this letter, on the 2nd of March, 1849, conceded that the grant extended to the source of the river, which would include a large part of what is now the State of Minnesota, and would make the grant nine hundred thousand acres of land.

On the 2nd of March, 1849, Walker, Secretary of the Treasury,

by letter, advised Young, Commissioner, of this opinion, and on June 16, 1849, Young directed the proper land officers to withhold the lands from sale in the odd-numbered sections. On the 19th of December, 1849, Butterfield, Commissioner, informed Jesse L. Williams, secretary of the board of public works, that no selections had been made above the forks.

On the 14th of January, 1850, the Commissioner of the Land Office informed Ewing, Secretary of the Interior, a new officer created by law and taking charge of the public lands, that a list of land charged against Iowa amounted to 825,078 acres, and that when adjusted the amount between the Raccoon Forks and source of the river was estimated to contain 900,000 acres.

On the 13th of March, 1850, the said Commissioner submitted to Ewing, Secretary, three lists of lands, the first of which showed the tracts falling within the limits of the grant above the Raccoon Forks, under the decision of the Secretary of the Treasury of March 2, 1849. On the 6th of April, 1850, Ewing, Secretary of the Interior, reversed the opinion of Walker, held that the grant did not extend above the forks, refused to confirm the selection of March 13, and required the Commissioner to report to Congress, that that body, if it saw fit, might extend the grant.

95 On the 14th of April, 1850, the Senators and Representatives from Iowa appealed from that decision to the President. The President, Taylor, referred the question to Reverdy Johnson, Attorney General, who, on the 19th of July, 1850, gave his opinion that the grant extended above the forks to the source of the river. Before this opinion was delivered the President died, a new Cabinet was appointed, and, instead of giving effect to Johnson's opinion, the question was submitted to Crittenden, the new Attorney General, who, on the 30th of June, 1851, gave his opinion that the grant did not extend above the Raccoon Forks. A. H. H. Stuart, Secretary of the Interior, on the 26th of July, 1851, concurred in this opinion, but on the 29th of October, 1851, addressed a letter to the Commissioner of the General Land Office, directing him to select and report for his approval a list of the alternate sections of land claimed by the State of Iowa above the Raccoon Forks, assigning as a reason therefor that by approving the selections without prejudice the question would be left open to the construction of the judiciary, and that the questions involved were more of a judicial than an executive character, and that the question must ultimately be settled by the judiciary.

In the following May three lists of lands were prepared in the General Land Office, headed as follows:

"No. 1. Showing the tracts falling within the limits of the Des Moines grant above the Raccoon Forks, so far as the surveys have extended, under the decision of the Secretary of the Treasury, March 2, 1849, that such grant extended to the northern boundary of the State.

"No. 2. Showing tracts disposed of within these limits between the date of one of the orders limiting the grant and one extending it.

"No. 3. Showing the vacant lands subject to the claim of the State."

The Secretary of the Interior, on the 30th of October, 1851, approved of this last list in accordance with his view of October 29th.

96	On the 30th of October, 1851	214,391.58	acres
	" 10th of March, 1852	143,908.37	"
	On the 17th of December, 1853	33,142.43	"
	" 30th of December, 1853	12,812.51	"

were thus certified and approved by the Secretary of the Interior. These approvals were certified under the reservations above referred to in the letter of October 29, 1851.

The 12,812.51 acres above referred to were selected under the act of September 4, 1841, giving to each of the new States 500,000 acres of land on coming into the Union.

On the 21st of March, 1856, the Commissioner of the General Land Office decided that the grant did not extend above the Raccoon Forks. The question was brought anew before the Secretary of the Interior, and he referred it to the Attorney General, who advised a proposal settlement. This was not accepted by the State of Iowa. On the 7th of May, 1858, the Secretary of the Interior rejected the claim of the State. An appeal was taken to the President, who referred the question to Attorney General Black, who decided in a letter dated November 22, 1858, that the claim of the State did not extend north of the Raccoon Forks.

On December, 1859, the Supreme Court of the United States, in suit between E. C. Litchfield *v.* The Dubuque & Pacific Railroad Company—Litchfield claiming under the act of 1846—held that the grant did not extend north of the forks of the Raccoon, and that the acts of Stuart & McClelland, Secretaries of the Interior, in reserving or setting apart the lands north of the Raccoon Forks, were null and void, and by that decision carried out the suggestion of the Secretary of the Interior, that the question was a judicial one, and must be settled by the courts.

3. On the 15th of May, 1856, Congress passed an act making a grant of land to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State. By section one, among other roads, a grant of land was made of alternate sections, designed by odd numbers, of six sections of land in width on each side of a railroad from Dubuque to a point on
97 the Missouri at or near Sioux City; and if, when the line of said road was definitely fixed, the United States had sold any of said sections, then the State was authorized, subject to the approval of the Secretary of the Interior, from other alternate sections within fifteen miles of the line of the road to make up the quantity. Said section provided that the lands so granted should be applied exclusively to the construction of the road, and excluded from the grant all lands before reserved by act of Congress, or any other manner by competent authority, for the purpose of aiding in works of internal improvement or any other purpose whatever. Congress had, prior to this, in 1850, made a grant to the State of certain

swamp lands, which might and did, upon survey and location, include a part of the lands otherwise included in the railroad grant of 1856.

On the 14th of July, 1856, the State of Iowa, by legislative act, accepted the grants made by the act of Congress of May 15, 1856, and parcelled out the lands to the various railroad companies therein referred to, and by the fifth section of said act so much of the lands, interests, rights, powers, and privileges as are or may be granted and conferred under said act of Congress to aid in the construction of the railroad from Dubuque to Sioux City was granted and conferred by the State to the Dubuque & Pacific Railroad Company, a body corporate created by and existing under the laws of Iowa. The act of Congress of May 15, 1856, authorized the State to dispose of the lands in this way, and a quantity of land not exceeding one hundred and twenty sections for every twenty miles of road built was to be conveyed to the company, and whenever the Governor of the State should certify to the Secretary of the Interior that any continuous twenty miles of road was completed then a hundred and twenty sections of land next nearest that was to be sold and conveyed to the said railroad corporation, and so on from time to time until the road is completed, and if any of the road was not completed in ten days no further conveyance was to be made and the lands unsold were to revert to the United States. The
98 Iowa act of July 14, 1856, required the Dubuque & Pacific Railroad Company to comply with these terms. The said Dubuque & Pacific Railroad Company accepted the terms of said act. The most of the road was surveyed by the 18th of April, 1857. A plat of the same was by that day presented by the Governor of Iowa to the Secretary of the Interior, and the alternate sections on the line thereof designated and set apart by him to the State of Iowa under the terms of the grant of the 15th of May, 1856. The line of this road crossed the Des Moines in an east and west direction, above the Raccoon Forks, and though a claim had been made and even land certified under the act of August 8, 1846, yet, after the decision referred to by the Secretary of the Interior, the State of Iowa asked and the Secretary of the Interior reserved the lands within the five miles of the Des Moines river above the Raccoon Forks for the railroad instead of the river grant, and said lands were reserved by proclamation of the President immediately after passage of the act, 1856.

The said Dubuque & Pacific Railroad Company, immediately after the location of said railroad and the selection and setting apart of the lands granted under said act, proceeded to build their road. The said railroad company performed all the conditions of said act up to the first day of June, 1861. In the month of August, 1861, the Dubuque & Pacific Railroad Company was merged in a new company, called the Dubuque & Sioux City Railroad Company, a corporation duly created under the laws of the State of Iowa, and which succeeded to all the rights and obligations of the Dubuque & Pacific Railroad Company. On the first of January, 1861, the Dubuque & Pacific or the Dubuque & Sioux City Railroad Company had built

and equipped five sections of twenty miles each, making one hundred miles of continuous railroad, and by the terms of the grant from Congress and the Iowa Legislature had acquired a complete and perfect title to the lands afterwards conveyed by the Dubuque & Sioux City Railroad Company to the plaintiff's assignors. The Governor of Iowa in March, 1860, certified that the four sec-
99 tions of twenty miles each of said railroad from Dubuque to Sioux City were completed according to the act of Congress of the 15th of May, 1856. On the 25th of April, 1861, the Governor of Iowa certified that the Dubuque & Sioux City Railroad Company had completed the fifth continuous twenty miles from Dubuque west, making one hundred miles, and, on the 29th of July, 1865, the Governor of Iowa certified that said company, on the 2nd of June, 1864, had completed the sixth section of twenty miles of said road west from Dubuque.

By the completion of said first five sections of twenty miles the said Dubuque & Sioux City Railroad Company, on the 21st of April, 1861, became entitled to the lands on both sides of the Des Moines river conveyed to and now held by the plaintiffs.

During the progress of the controversy between the State and Federal officers in relation to the construction of the act of 1846 selections of land which might belong to the State were made and approved as above stated, but not otherwise. After the opinion of Attorney General Black, in 1858, the State of Iowa and the Secretary of the Interior treated the lands in Iowa as belonging to the railway (not river) grant, and on application of the Des Moines Navigation Company for a title, as assignee of the State, was refused by the Secretary of the Interior in 1860 and 1863.

On the 11th of April, 1863, the Commissioner of the General Land Office certified, and the Secretary of the Interior approved the selections, that the Dubuque & Sioux City Railroad Company was entitled to the lands now claimed by the plaintiffs, as purchasers of the Dubuque & Sioux City Railroad Company, and the said railroad company acquired title to the same when the certificate was given by the Governor, in 1861, that they had completed the fifth section of twenty miles of their road.

The State of Iowa, under the river grant of the 8th of August, 1846, undertook to improve the navigation of the river, and, up to the 9th of June, 1855, had sold about 327,000 acres of land, of which amount 58,830 acres were located above the Raccoon Forks.
100 On the 9th of June, 1854, the State made a contract with the Des Moines Navigation & Railroad Company, a corporation created by the laws of Iowa, to improve the navigation of the river, and to convey to said corporation all the remaining lands belonging to the State under the act of 1846. This corporation made some progress in their work, and, as the improvements progressed, the State, by its proper officers, issued to the Company certificates of land, the first dated the 14th day of May, 1855, for 88,853.10 acres; the second, May 6, 1856, for 216,636.64 acres, making in all 205,489.64, all located above the Raccoon Forks except about 50,000 acres, and including the lands owned or claimed by the plaintiffs east of the Des Moines river.

The Commissioner of the General Land Office and the Secretary of the Interior refused to certify or convey these lands to the State or the Des Moines Navigation & Railroad Company, their last act being to set apart the lands on the 30th of December, 1853; and, there being no other provision made for payment to the Des Moines Navigation & Railroad Company, the State and the said company, in pursuance of joint resolutions of the Legislature of March 22, 1858, settled the difficulties arising out of the construction of the grant of August 8, 1846, whereby the State relinquished its title to the land certified by the State officers to the Company, to wit, 205,489.64 acres. The company paid the State twenty thousand dollars, and abandoned the work.

The State, on the same day (March 22, 1858), by legislative act, conveyed its remaining interest in the lands to the Keokuk, Fort Des Moines & Minnesota Railroad Company, now called the Des Moines Valley Railroad Company, a corporation created by the laws of Iowa, subject to the grants made by the State to the railroad companies under the acts of May 15 and July 14, 1856.

On the 2nd of March, 1861, Congress, by a joint resolution, held that the grant of August 8, 1846, did not extend above the
101 Raccoon Forks, and released to the State of Iowa certain lands above the forks which had been improperly certified to the State by the Secretary of the Interior, and were then held by *bona fide* purchasers from the State. This joint resolution was construed by the State and Congress, through its executive officers, to refer to certain lands above the forks, conveyed to settlers or other individuals, amounting to about 58,000 acres, a list of which is herein referred to, and includes no part of the lands claimed by the plaintiffs. At the date of this resolution the Dubuque & Sioux City Railroad Company had acquired from the State, with the assent of the Secretary of the Interior, the title to the lands now claimed by the plaintiff in this controversy. The certificates therefor had then all been issued by the Governor of the State.

On the 12th of July, 1862, Congress passed an act whereby the grant of lands to the Territory of Iowa by act of Congress of August 8, 1846, was extended so as to include the alternate sections of land lying within five miles of the Des Moines river, above the Raccoon Forks, to the northern boundary of the State. Said act and resolution of the 2nd of March, 1861, was passed at the request of the Legislature of Iowa, with an express reservation of all rights to the grantors of the plaintiff. The resolutions of the Legislature are hereto annexed. Said act provided that if any of the lands had been sold or otherwise disposed of by the United States before the passage thereof, except those released by the resolution of March 2, 1861, (1862 miscalled in the act) the Secretary of the Interior was directed to set apart an equal amount of lands lying within the State, to be certified in lieu thereof, and if the State had sold any part of the lands lying within the limits of the grant, the title of which had proved invalid, and any land which should be certified to the State in lieu thereof, by the provisions of said act, should be held as a trust fund for the benefit of the persons whose title had failed.

At the date of this act the Supreme Court, in the case of

102 Litchfield *v.* Dubuque & Pacific Railroad Company, 2 Black, 66, had decided that the grant of 1846 did not extend above the Raccoon Forks, and that the title of the Des Moines Navigation & Railroad Company to such lands as had been certified and conveyed to them above the Raccoon Forks had failed. This decision was made at the December term of the court, in 1859. The court in said cause held that the setting apart of these lands by Stuart, Secretary of the Interior, was a null and void act, and implied that the railroad company was entitled to the lands in dispute under the act of 1856. Under the act of July 12, 1862, the State of Iowa, through its officers, and the Secretary of the Interior treated the title of the Dubuque & Sioux — railroad, under the act of 1856, as a good title. The State of Iowa passed resolutions appointing Josiah A. Harvey, register of the State land office, a commissioner to adjust with the General Government the claims of the State under the act of July 12, 1862, and, on the 22nd of May, 1866, the said commissioner and the State of Iowa did adjust and settle the claim of the State under the resolution of March 2, 1861, and act of July 12, 1862, by a paper-writing, which was approved by the State of Iowa on the 20th of June, 1866. Both the Secretary of the Interior and the State of Iowa, in said settlement, treated the lands claimed by the plaintiff as having been sold or disposed of by the United States, under the act of 1856, to the Dubuque & Sioux City Railroad Company, and the Secretary of the Interior set apart an equal amount of lands in lieu thereof, which were held by the State in trust for the parties whose title had proved invalid, which title so proved invalid *were* — the Des Moines Navigation & Railroad Company.

The lands referred to in the resolutions of March 2, 1861, were settled by the State and the Secretary of the Interior, and were entirely different lands from these claimed by the Des Moines Navigation Company. The settlement of 1866 contained the following distribution of lands:

103 "*Adjustment of Iowa Des Moines River Grant under Act of July* 12, 1862, *and Joint Resolution of March* 2, 1861.

"DEBIT.

	Acres.
"The State of Iowa, the quantity of indemnity lands selected under special certificate dated April 25, 1863	297,603.74
"The lands in place (meaning by 'in place' the odd sections not sold by Congress within limits of grant)	167,109.02
"The lands in place confirmed by joint resolution March 2, 1861	44,838.64
"The quantity selected on the east fork Des Moines river, and certified to the State under original act of August 8, 1846	11,661.80
"The excess selected and approved to State under its 500,000-acre grant	35,473.54
	"556,686.74
"Remains due State	1,317.32
	"558,004.06

"CREDIT.

"Whole area of grant above Raccoon Forks---------- 558,004.06"

By the act of the 12th of July, 1862, and said settlement the State of Iowa became the trustees of the Des Moines Navigation & Railroad Company and its assigns for so much of said lands above the forks as the State had conveyed to them, a part of which (about fifty thousand), east of the Des Moines, was conveyed by the Secretary of the Interior and the State to the Dubuque & Sioux City Railroad Company; and if the latter company's title failed, and the Des Moines Navigation Company's title was good, then a trustee for the plaintiffs in this suit.

As to these lands claimed by the plaintiffs west of the Des Moines river the navigation company has never claimed them. The Des Moines Valley Railroad Company has disclaimed any title as to part of them and claims title as to part. If they now assert any,
104 they have none, they having received from the State indemnity lands in lieu thereof, which is in law a complete bar to their claim. Plaintiff prays that they may disclose what part they claim, if any.

The state of Iowa has recently conveyed by quit-claim all its title to the indemnity lands under the act of July 12, 1862, but as to such of said lands as were held in trust by the State for parties whose title had failed the conveyance by quit-claim does not pass the title held in trust; and, if it did, the Des Moines Valley Railroad Company holds them also in trust, and for no other purpose.

The said Des Moines Valley Railroad Company have executed a deed of trust to M. D. Gilman and N. A. Crowdey of all such lands as they had or might obtain from the State for building their road, and no others.

After the passage of the act of July 12, 1862, and the acceptance thereof by the State of Iowa, and the settlements of May, 1866, Samuel G. Wolcott, a citizen of New York, claiming to be a purchaser of the east half of sec. 17, T. 87 N., R. 27 west, in the county of Webster, Iowa, from the Des Moines Navigation Company, by deed of date of August 1, 1859, brought a suit in the circuit court of the United States for the southern district of New York against the Des Moines Navigation & Railroad Company for a breach of warranty of title. This suit was brought by Wolcott in New York, by consent of the Des Moines Navigation Company, outside of the jurisdiction of the State of Iowa, by the laws of which it was created, and where alone it could reside and be sued on such a contract, and was designed and intended by the parties to make an agreed case to settle the construction of an act of Congress, in which bill the plaintiff and defendant had the same interest, averse to the claim of the plaintiffs in this suit, in which they jointly paid the costs, and the attorneys employed were both really interested on the same side, and their object was to obtain an adjudication of the rights of the plaintiff and others who were like situated and were not before the court.
105 Though the suit was commenced before the settlement under the act of July 12, 1866, it was not decided in the Supreme Court

until after the settlement under that act. The rights of the plaintiff, as herein declared, were not set forth in the pleadings or alluded to by the court. The settlement of 1866 and the construction of the act of 1862 by the State and Federal Government were not known to the court, and the decision in that case is no bar nor precedent to control the action of this court on the question now presented. The decision of the Supreme Court in that cause, holding the Des Moines Navigation Company's title good, was made at the December term of the Supreme Court for 1866.

After the settlement of the State with the Des Moines Navigation Company, in 1858, the said navigation company conveyed certain parcels of the land now claimed by the plaintiff to the following persons, among others: Samuel G. Wolcott, Wm. B. Welles, Roswell Burrows, Edwin C. Litchfield, Wm. J. McAlpine, Richard B. Chapman, Albert H. Tracy, Francis N. Tracy, Harriet Tracy, Electus B. Litchfield, Edward Wade, and John Stryker. These parties, and others not known to the plaintiffs, have commenced a very large number of actions at law in this court, the plaintiff is informed, to the number of one hundred and fifty, against persons claiming both from the plaintiffs or otherwise to eject them from lands owned by the plaintiffs. A great many more actions at law have been commenced against other parties involving the same title; and actions at law are threatened to be brought directly against the plaintiff for the lands in dispute, which they have not contracted to sell, and of which they are in nominal possession, on which they pay taxes. A list of some of these suits, and the names of the parties and description of the lands claimed, are hereto annexed and made part of this bill. The Des Moines Navigation Company have also begun suits at law against claimants under the plaintiffs, or for the plaintiff's lands, which will appear by said list. These purchasers from the navigation company are said to be, and the plaintiff so charges were, stockholders in the corporation, and held the
106 title to the lands claimed by them for their share, or parts of of it, of stock in the corporation. Neither the navigation company nor the stockholders thereof were purchasers without notice. They knew the construction put on the act of Congress before they made their contract with the State, and they knew of the passage of the act of 1856 and its construction before they made the settlement and received the conveyance from the State.

The Secretary of the Interior, O. H. Browning, at one time construed the decision in Wolcott's case to entitle the United States to all the lands claimed by the plaintiff, because the State had got other lands in lieu thereof—one on the act of July 12, 1862—and he has allowed parties to apply for pre-emption to the lands claimed by the plaintiff. He has reversed this decision in part, but the parties named as pre-emptors still claim title to the property adversely to the plaintiffs. A list of said applicants is hereto annexed and made part hereof.

The Des Moines Valley Railroad Company, formerly the Keokuk, Fort Des Moines & Minnesota Railroad Company, have obtained a quit-claim deed for and claim title to, not only all the lands certi-

fied to the State of Iowa under the settlement of 1866, between the State and Federal Governments, which were set apart to them within the limits of the grant, called lands in place, but they claim title to all the lands certified to the State in trust for these parties to whom the State had conveyed title and which had failed. The State of Iowa has accepted the trust, and any persons claiming to hold any of the trust lands hold them subject to the trust. There has been no separation of these held in trust, for the bad title, from others.

The plaintiffs allege that theirs is the better title to the lands claimed by them. A list of those conveyed to the Dubuque & Sioux City Railroad Company, within the limits of the Des Moines river grant, on each side of the river, is made out in separate tracts and made part of this bill. Copies of the plaintiff's title deeds and certificates are also annexed and made part of this bill. The
107 plaintiff also attaches to this bill and makes part thereof a list of the suits at law begun as herein set forth in part; certificates of the Governor of Iowa and the Secretary of the Interior conveying title to the Dubuque & Sioux City Railroad Company; copies of the settlement of the State of Iowa and the United States under the resolutions of March 2, 1861, and July 12, 1862; copies of the acts of Congress and Legislature of Iowa which relate to the controversy; copies of the correspondence of various public officials which relate to the subject, and makes them all a part of this bill.

The plaintiffs allege that the title claimed by the Des Moines Navigation Company and their vendees, Walcott, Welles, Burrows, Edwin C. Litchfield, William J. McAlpine, Richard B. Chapman, Albert H. Tracy, Francis W. Tracy, Harriet Tracy, Electus B. Litchfield, and John Stryker, is the inferior title, and one which the State had conveyed away and failed, and referred to in the act of July 12, 1862; that the Des Moines Valley Railroad Company have no title to either the lands claimed by the plaintiff or to the lands conveyed to the State in trust for the party whose title had failed; and, if they have any legal title to such, they held it in trust for the navigation company and their assignees or for the plaintiff. If the plaintiff's title is the one that has failed and referred to in the act of July 12, 1862, then the State is the trustee of the plaintiff. The Des Moines Valley Railroad Company held the residue undivided, and are bound to surrender all claim derived from the State by their deed to the plaintiff, and are bound to consent to a severance of the lands belonging to the plaintiff in such case from the residue. Thomas Colter, Jacob Crouse, and John P. McDermott have no right to the pre-emptions claimed by them.

The said plaintiffs have been in possession of the lands claimed by them, themselves or their vendees in contract, since 1861. They have paid the taxes thereon to the State of Iowa since, in all
108 amounting to eighty thousand dollars, and if their title has failed they are entitled to have their taxes refunded since 1861 by the holder of the legal title, who has not paid them.

The plaintiff says he has no adequate remedy for the grievances complained of, except in a court of equity. He makes The Des Moines Navigation and Railroad Company, Samuel G. Wolcott, Wm. B. Welles, Roswell Burrows, Edwin C. Litchfield, Wm. J. McAlpine,

Richard B. Chapman, Albert H. Tracy, Francis W. Tracy, Harriet Tracy, Electus B. Litchfield, Edward Wade, and John Stryker, The Des Moines Valley Railroad Company, and Thomas Colter, Jacob Crouse, John P. McDermott, parties defendant to this suit, and prays for a writ of subpœna against them, returnable to the next term.

The plaintiff prays that said parties may be enjoined from prosecuting said actions or any other actions in law in relation to the title or possession of any of said lands until the final hearing of the bill; that the injunction be made perpetual; that said defendants, Colter, Crouse, and McDermott, be enjoined perpetually from prosecuting any pre-emption to any of said lands; that the conflicting acts of the Secretary of the Interior and judicial decisions may be finally interpreted; that the plaintiffs may be quieted in their title and possession to said lands on both sides of the river; or, if the plaintiffs' title to said lands is not the better title, and his title to said lands is the title conveyed by the State, and failed under the right interpretation of the acts of 1846, 1856, and 1862, that his title to an equal number of acres in lieu thereof be decreed and established; that an account be taken of said indemnity lands, and the Des Moines Valley Railroad Company be decreed to make partition thereof, and set apart and convey or relinquish to the plaintiff such lands as the plaintiff may be entitled to under said act of July 12, 1862 (the State being acting trustee to do justice in the premises, and to convey to such party as may be established the true beneficiaries under said act); that in the event of a decree that the plaintiff's present title or any part of it has failed that the said Des Moines Navigation and Railroad Company and its assigns
109 may be decreed to repay to the plaintiff all taxes which he has paid on said lands, and interest thereon.

And that said Des Moines Valley Railroad Company be decreed to release to the plaintiff all claim to the indemnity lands set apart to the plaintiffs, and for such other relief as the nature of the plaintiff's case may require.

GRANT & SMITH,
Attorneys for Plaintiff.

The defendants read from the same record the answer of William B. Welles, one of the defendants in said suit, as follows:

United States Circuit Court, District of Iowa. In Equity.

THE IOWA HOMESTEAD COMPANY, Complainant,
vs.
THE DES MOINES NAVIGATION AND RAILROAD COMPANY, SAMUEL G. Wolcott, Wm. B. Welles, Roswell Burrows, Edwin C. Litchfield, Wm. J. McAlpine, Richard B. Chapman, Albert H. Tracy, Francis W. Tracy, Harriet Tracy, Electus B. Litchfield, Edward ——, John Stryker, & Others, Defendants.

The several answers of the defendant, Wm. B. Welles, to the bill of complaint of the Iowa Homestead Company, complainant.

This defendant, Wm. B. Welles, now and at all times hereafter, saving and reserving to himself all manner of benefit and advan-

tage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereto, or unto so much or such parts thereof as this defendant is advised is material for him to make answer unto, answers and says that he is informed by complainant's said bill of complaint, and believes to be true, that the said Iowa Homestead Company is a corporation created by the laws and a citizen of the State of Iowa, for the purpose of buying and selling lands in said State, but as to whether or not said corporation was duly created and organized by a full and complete observance of the requirements of the statutes of
110 said State authorizing and providing for the organization and formation of corporations this defendant has not sufficient knowledge or information to form a belief.

And this defendant says that, as to whether or not said complainant, by deed of purchase bearing date November 12, 1863, acquired by and through the Dubuque and Sioux City Railroad Company all the rights of the said company and the Dubuque and Pacific Railroad Company to about fifty thousand acres of land lying on the east side of the Des Moines river, in Webster and Humboldt counties, Iowa, being the odd sections of land within the limits of the Dubuque and Pacific Railroad grant of 1856, and of the Des Moines river grant of 1846, as in complainant's bill alleged, the defendant is ignorant and uninformed save by complainant's bill of complaint, and leaves complainant to proof thereof; but he expressly denies that by such deed or deeds of purchase or otherwise the said complainant ever acquired the right and title of the State of Iowa to the said fifty thousand acres, as in complainant's bill claimed.

And this defendant, further answering, admits that the said Des Moines Navigation and Railroad Company is a corporation created by the laws of the State of Iowa, and the said company and its grantees claim the said fifty thousand acres of land — in the said bill of complaint, and the lists therein referred to and thereto annexed and described, or so much and such parts and portions thereof as were certified and approved to the State of Iowa, under the act of August 8, 1846, and conveyed to the said Des Moines Navigation and Railroad Company by the State of Iowa and subsequently confirmed by the joint resolution of March 2, 1861, and the act of Congress of July 12, 1862, as hereinafter stated and set forth; and this defendant alleges and avers that the said Des Moines Navigation and Railroad Company and its grantees claim all the lands lying in the alternate odd-numbered sections within five miles of the Des Moines river, and on the east side thereof, and in the said counties of Webster and Hamilton and Humboldt, as far north as the north line of township
111 92, and on the west side thereof as far north as the second correction line, and have full and complete title thereto, as hereinafter stated and set forth.

And this defendant admits the passage by Congress of the said act of August 8, 1846; that on the 24th of February, 1847, the State of Iowa appointed a board of public works to improve the navigation of said (Des Moines) river, and that on the 23d day of February, 1848, R. M. Young, Commissioner of the General Land Office,

addressed to the secretary of the said board of public works a letter containing the language quoted in complainant's bill stated and set out.

And this defendant admits that on or about the 17th of October, 1846, the Governor of the State of Iowa was notified by James H. Piper, acting Commissioner of the General Land Office, by letter, that, "under the grant of August 8, 1846, the Territory of Iowa was entitled to the vacant lands in the alternate sections within five miles on each side of the Des Moines river from the northern boundary of Missouri to the Raccoon Forks of the Des Moines river," but, upon information and belief, he denies that the territorial and State authorities acquiesced in the opinion expressed in said letter, so far as it implies that the grant extended only to the Raccoon Forks.

And this defendant admits that on the 19th of June, 1848, the President, by proclamation, ordered into market some of the lands in the odd-numbered sections above the Raccoon Forks; that the board of public works in Iowa protested against this; that, on the 8th of January, 1849, the delegation in Congress from Iowa called the attention of the Secretary of the Treasury to the construction of the act of August 8, 1846, claiming that the odd sections above the Raccoon Forks, which had been ordered into market by the President, belonged to the State of Iowa, under the said grant of August 8, 1846, and that R. J. Walker, Secretary of the Treasury, on
112 the 2d day of March, 1849, held and decided that the said grant of August 8, 1846, extended to the source of the Des Moines river.

And this defendant admits and alleges that on the 2d of March, 1849, R. J. Walker, Secretary of the Treasury, communicated to R. M. Young, Commissioner of the General Land Office, his said decision in respect to the extent of said grant, and instructed him to be governed thereby, and that on the 16th of June, 1849, the said Commissioner withdrew the said lands in the said odd-numbered sections above the Raccoon Forks from sale, pursuant and in obedience to the said construction of Secretary Walker, and on the same day the said Commissioner advised the land officers in the State of Iowa having in charge the sale of public lands above the Raccoon Forks in the State of Iowa of the decision of the Secretary of the Treasury, and directed and instructed them accordingly to withdraw from market and withhold from sale the lands in the odd-numbered sections above the Raccoon Forks and within five miles of the Des Moines river.

And this defendant, further answering, admits that on or about the 14th of January, 1850, the Commissioner of the General Land Office informed Ewing, Secretary of the Interior, that the lands charged against the State of Iowa amounted to 825,078 acres, and when the grant was adjusted the amount between the Raccoon Forks and the source of the river was estimated to contain 900,000 acres.

And this defendant, further answering, says that as to whether or not the Commissioner of the General Land Office on the 13th of March, 1850, submitted to Secretary Ewing three lists of lands show-

ing the tracts falling within the limits of the grant above the Raccoon Forks, as in complainant's bill alleged, he is ignorant and -informed, save by the complainant's bill of complaint; he admits, upon information, and belief, that on the 6th of April, 1850, Secretary Ewing addressed to the Commissioner of the General Land Office the letter of which a copy, in substance, is set out among the exhibits annexed to complainant's printed bill, at pages 64 & 65 thereof, but he
113 denies that said Ewing, by said letter or otherwise, revoked the decision of Secretary Walker, and denies that he had any authority to review or reverse the decision of Secretary Walker, which had been acted on and carried out, and that his said letter or any act or order of his whatever could affect or reverse the said decision of Secretary Walker.

And this defendant, further answering, admits that on the 19th of July, 1850, Reverdy Johnson, Attorney General, upon submission of the question to him by the President, gave and rendered his opinion that the grant of August 8, 1846, extended above the Raccoon Forks, to the source of the river; that on the 30th of June, 1851, Crittenden, Attorney General, expressed the opinion that the grant did not extend above the Raccoon Forks; that on the 29th of October, 1851, Stuart, Secretary of the Interior, addressed to the Commissioner of the General Land Office the letter, of which a copy is set out among the exhibits annexed to complainant's printed bill on file, on pages 65 & 66, in which he directed said Commissioner to select and report for his approval a list of the alternate sections of land claimed by the State of Iowa above the Raccoon Forks, under the said grant of August 8, 1846, and this defendant alleges and avers that said Secretary Stuart, by his order and direction in said letter contained, expressly and distinctly recognizes the acts of Secretary Walker in the premises as valid and binding upon the United States, and directly recognizes the validity of the claim of the State of Iowa under the said grant of August 8, 1846, to lands lying in the alternate odd-numbered sections above the Raccoon Forks, and within five miles of the Des Moines river, including those claimed by the complainant in this section as against the said Des Moines Navigation and Railroad Company and its grantees.

And this defendant, further answering, admits that the Supreme Court of the United States, at the December term, 1859, and on or about the 9th day of April, 1860, in the case of Litchfield *vs.*
114 The Dubuque and Pacific Railroad Company, held and decided that the grant contemplated by the act of August 8, 1846, did not extend above the Raccoon Forks.

And this defendant, further answering, admits and alleges that on the 30th of October, 1851, the Commissioner of the General Land Office and the Secretary of the Interior certified and approved to the State of Iowa, under the said grant of August 8, 1846, of the lands lying in the alternate odd-numbered sections above the Raccoon Forks, 214,391.58 acres, and on the 10th of March, 1852, the further quantity of 143,908.37 acres; and on the 17th of December,

1853, the further quantity of 38,142.43 acres; and on the 30th of December, 1853, the further quantity of 12,813.51 acres.

And this defendant, further answering, says that he is ignorant and uninformed, save by the said complainant's said bill of complaint, as to whether or not the Commissioner of the General Land Office on the 21st of March, 1856, decided that the grant of August 8, 1846, did not extend above the Raccoon Forks. Upon information and belief he admits that Attorney General Black, in his letter of November 22, 1858, expressed the opinion that the grant of August 8, 1846, did not extend above the Raccoon Forks, but upon information and belief he denies that the Secretary of the Interior on the 7th of May, 1858, rejected the claim of the State of Iowa to the lands above the Raccoon Forks, which had been certified to the State as aforesaid.

And this defendant, further answering, admits that the Congress of the United States, on or about the 15th of May, 1856, passed and enacted the act entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," and that a copy thereof is set out as an exhibit to complainant's bill in the printed copy thereof on file, at pages 127, 128, & 129 thereof, and also admits that on or about the 14th of July, 1856, the General Assemby of the State of Iowa passed the act entitled "An act to accept the grant and carry into execution the trust conferred upon the State of Iowa by an act of Congress entitled 'An act making a grant of
115 lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State,'" approved May 15, 1856, and that a copy of the said act of the General Assembly is substantially set out in complainant's printed bill at pages 129, 130, 131, 132, 133, & 134 thereof, but this defendant expressly denies that, under and by the said act of Congress and the said act of the General Assemby, or either of said acts, either the State of Iowa or the Dubuque and Pacific Railroad Company or the plaintiff obtained or acquired any title or interest in the lands claimed by the plaintiff in this action which had been previously certified and approved to the State of Iowa by the Commissioner of the General Land Office or the Secretary of the Interior under the said act of Congress of August 8, 1846; and this defendant expressly alleges and avers that all the lands in complainant's bill of complaint designated, specified, and claimed by plaintiff which had, previous to the passage of said act of Congress of May 15, 1856, been certified to the State of Iowa under the said grant of August 8, 1846, as hereinafter stated (being the lands lying in the alternate odd-numbered sections within five miles of the Des Moines river), had been, and at the time of the passage of said act of May 15, 1856, were, expressly reserved to and by the United States by competent authority, and by the last proviso in section one of said act were expressly reserved from the operations and effect of the said act, and the same, being so reserved, never passed to the State of Iowa under the said act of May 15, 1856, and by the said act the State of Iowa acquired no title to the said land for the purpose of said act or

otherwise, and the State of Iowa was not authorized by the said act of May 15, 1856, to dispose and certify, or to convey or authorize to be conveyed, to the said Dubuque and Pacific Railroad Company, or to any corporation or person whatsoever, the said lands in the said alternate odd-numbered sections embraced in the limits of the lands certified and approved to the State of Iowa under the said grant of August 8, 1846, or any part or parcel or portion thereof.

And this defendant, further answering, says that as to
116 whether or not a plat of the Dubuque and Pacific Railroad Company was, on the 18th of April, 1857, presented by the Governor of Iowa to the Secretary of the Interior and the alternate sections on the line thereof designated and set apart by him to the State of Iowa under the grant of May 15, 1856, this defendant is ignorant and uninformed, save by said complainant's bill of complaint, but, upon information and belief, he denies that the State of Iowa asked, and the Secretary of the Interior reserved, the lands (so far as the same had been certified to the State of Iowa under the grant of August 8, 1846) within five miles of the Des Moines river above the Raccoon Forks for the railroad instead of the river grant.

And this defendant, further answering, upon information and belief, alleges and avers that the said Dubuque and Pacific Railroad Company and the Dubuque and Sioux City Railroad Company, nor either of said companies, ever complied with and performed the conditions and requirements of the said act of the General Assembly of July 14, 1856, to entitle them to the lands in controversy in this suit thereunder, but utterly failed to complete and construct their road as and in the manner and at the time and times in said act specified; and this defendant expressly denies that by anything in the said act of Congress of May 15, 1856, and the act of the General Assembly of the State — of July 14, 1856, contained, or by anything done by said Dubuque and Pacific Railroad Company or the said Dubuque and Sioux City Railroad Company, or the Governor of Iowa or the Secretary of the Interior, as in complainant's bill alleged, the State of Iowa or the said railroad company ever acquired any title to or interest in the lands lying in the alternate odd-numbered sections within five miles of the Des Moines river, and certified to the State of Iowa by the Secretary of the Interior, under the said grant of August 8, 1846, as hereinafter stated and set forth.

And this defendant denies that, after the opinion of Attorney General Black in 1858, the State of Iowa and the Secretary of the Interior treated the said lands certified to the State under
117 act of August 8, 1846, as belonging to the railway and not to the river grant, and, upon information and belief, he denies that an application of the Des Moines Navigation Company for a title as assignee of the State was refused by the Secretary of the Interior, as in complainant's bill alleged. And this defendant, further answering, says that he is informed and believes to be true, and therefore alleges and avers, that the said Des Moines Navigation and Railroad Company uniformly, after the said lands were certified to the State under the said act of August 8, 1846, and sold and conveyed to the said company by said contract of June 9, 1854,

and by the deeds to said company as hereinafter stated, claimed and insisted that they had and held full, absolute, and complete title to said lands; that with the sole view of procuring evidence to said company directly of the title to said lands said company, by Reverdy Johnson, their attorney, about the year 1856, applied to the Secretary of the Interior to issue patents for said lands directly to said company, but said Secretary declined and refused to issue such patents for the reason that the United States had no title thereto, having by the certificates of said lands to the State under the act of August 8, 1846, parted with its title to the said lands.

And this defendant denies that on the 11th of April, 1863, the Commissioner of the General Land Office certified that the Dubuque and Sioux City Railroad Company were entitled to the lands now claimed by plaintiff as purchasers of the Dubuque and Sioux City Railroad Company; and denies that the said Dubuque and Sioux City Railroad Company acquired title to said lands when the certificate was given by the Governor in 1861, as in complainant's bill alleged; and the defendant, upon information and belief, alleges that the certificate given by the Commissioner of the General Land Office was given on or about February 26, 1863, a copy of which, in substance, is set out in complainant's bill as an exhibit at pages 24 & 25.

And this defendant, further answering, says that as to whether or not the Dubuque and Pacific Railroad Company in August,
118 1861 (or at any other time), was merged in a new company called the Dubuque and Sioux City Railroad Company, and which succeeded to the rights and obligations of the Dubuque and Pacific Railroad Company, this defendant is ignorant and uninformed, save by the said complainant's said bill of complaint; and he expressly denies that — the completion of the said first five sections of twenty miles each the Dubuque and Sioux City Railroad Company on the 25th of April, 1861, or at any other time, became, or that the said company or its grantees now is, entitled to the lands on both sides of the Des Moines river, now claimed by complainant in this action; and that this defendant is ignorant and uninformed, save by complainant's said bill, as to whether or not the Governor of Iowa on the 25th of April, 1861, certified that said Dubuque and Sioux City Railroad Company had completed the 5th continuous twenty miles of road west from Dubuque, and as to whether or not said Governor on the 29th day of July, 1865, certified that said company on the 2d of June, 1864, had completed the sixth section of twenty miles of said road west from Dubuque, as in complainant's bill alleged.

And this defendant, further answering, admits that on or about the 9th day of June, 1854, the State of Iowa made and entered into a contract with the Des Moines Navigation and Railroad Company for the improvement of the Des Moines river, and to convey to said company all the unsold lands above the Raccoon Forks which had been certified to the State under the said act of August 8, 1846; that the said company undertook and entered upon said work, and as the improvement progressed the State, by its proper officers, issued

to said company certificates of sale of about 205,489.64 acres of said lands, including those claimed by the plaintiff, east of the Des Moines river; and this defendant expressly denies that the Commissioner of the General Land Office and the Secretary of the Interior refused to certify or convey the said lands to the State or the Des Moines Navigation and Railroad Company, and alleges and avers that all said lands were duly certified and approved
119 to the State under the act of August 8, 1846, by said Commissioner and Secretary prior to the date of said contract with the State, June 9, 1824.

And this defendant, further answering, denies that the State of Iowa and the said Des Moines Navigation and Railroad Company, in the settlement made under and in pursuance of the joint resolutions of March 22, 1858, settled difficulties arising out of the construction of the grant of August 8, 1846, and he alleges and avers that the State then claimed to own and have the title to all the unsold lands which had been certified to it under the grant of August 8, 1846, and the settlement by and between the State and said company, in pursuance of which the State conveyed the said lands to said company, was simply a settlement of the claims made by said company for monies expended and work done, and materials furnished by said company, under its contract and the other claims referred to in said joint resolutions herein stated and alleged.

And this defendant, further answering, admits the passage by Congress of the joint resolution of March 2, 1861, but he denies that the said joint resolution was construed by the State of Iowa and by Congress, through their executive officers or otherwise, to refer only to lands above the Raccoon Forks conveyed to settlers and other individuals, and not to include the lands claimed by plaintiff in this action, and he expressly denies that at the date of said resolution the Dubuque and Sioux City Railroad Company had acquired from the State the title to the lands now claimed by the plaintiff in controversy as against the Des Moines Navigation and Railroad Company and its grantees, or any part or portion thereof.

And this defendant, further answering, admits that, at the date of said act of July 12, 1862, in said complainant's bill mentioned, the Supreme Court, in the case of Litchfield *vs.* The Dubuque and Pacific Railroad Company, had decided that the grant of August 8, 1846, did not extend above the Raccoon Forks, but he denies that such Court, by implication or directly, in said cause held or
120 decided that the said Dubuque and Pacific Railroad Company was entitled to the lands in dispute herein under the act of 1856 or otherwise; but, on the contrary, he affirms and alleges that the said Supreme Court, in the case of Wolcott *vs.* The Des Moines Navigation and Railroad Company, expressly held and decided that the said railroad company acquired no title or interest in the said lands whatever under the said act of May 15, 1856, and that the same, by the terms of the proviso and exception in said act contained, were expressly reserved from the operation of said act from the grant therein contained.

And this defendant, further answering, admits that the State of

Iowa appointed Josiah A. Harvey, register of the State land office, a commissioner to adjust the claims of the State under the grant made to the State, and that the act appointing said Harvey such commissioner was passed and approved March 30, 1866; that said Harvey, as such commissioner, as this defendant is informed and believes to be true, assumed, on behalf of the State, to make adjustments of the several grants to the State, but whether such adjustment is truly and correctly set out in complainant's bill this defendant has no knowledge or information save that implied by the allegations in the said complainant's said bill of complaint, but this defendant expressly alleges and avers that such assumed and pretended adjustment was not made until long after the title to the lands in dispute had, by the joint resolution of March 2, 1861, and the act of July 12, 1862 (heretofore referred to), been confirmed to the State and its grantees, and not until the month of June, 1866; and he expressly alleges that at the time of such assumed or pretended adjustment the title to the lands in dispute had wholly and absolutely passed from the State of Iowa, and then vested —; that the deeds or patents executed by the State to said company, and by said company to its several grantees, as herein stated, covering the lands in dispute as against this defendant, were then in full force, having never been judicially set aside, and were and are conclusive as against the State, and that neither the State of Iowa nor its agent,
the said Harvey, nor the census board of the State, nor the
121 General Land Office and Secretary of the Interior had any
power, authority, or control over said lands in dispute, and that any adjustment made by them, or any of them, in respect to the said lands, did and could in no way operate to impair or affect or disturb the title of the Des Moines Navigation and Railroad Company and its grantees to the said lands, but that such adjustment, so far as said company and its grantees are concerned, was and is of no binding force or obligation whatever, but was wholly and entirely nugatory and void.

And the defendant, further answering, expressly denies that the lands referred to and covered by the resolution of March 2, 1861, were different lands from those claimed by the Des Moines Navigation and Railroad Company, and he avers and alleges that the lands in dispute herein, so far as conveyed to said company, are part and parcel of the lands in said joint resolution referred to as having "been certified to the State improperly by the Department of the Interior as a part of the grant by act of Congress approved August 8, 1846," and held by *bona fide* purchasers under the State of Iowa, and that the confirmation of the same to the State of Iowa by the joint resolution vested the title therein in the grantees of the State, the said Des Moines Navigation and Railroad Company and its grantees, absolutely and beyond all control of the State or the United States.

And in support of the proposition that the lands included in and covered by the joint resolution of March 2, 1861, were the same lands now claimed by the Des Moines Navigation and Railroad Company and its grantees, including those in dispute in this action, this defendant alleges and avers that the Commissioner of the General

Land Office, on the 26th day of June, 1862, for the purpose of enabling the Land Department at Washington to determine what part and portions of the said lands which had been "certified to the State" had, by the State, been conveyed to *bona fide* purchasers under the State, addressed to the Governor of Iowa an official letter requesting the Governor "to furnish his office with a list of the tracts
122 referred to in said resolution and held by *bona fide* purchasers under the State of Iowa on the 2d of March, 1861, and to certify the same under his official seal, specifying in each case the date of sale, name of purchaser, consideration, and the date of the patent or deed or conveyance by the State;" and that copy of said letter is set out among the exhibits to complainant's bill, on page 105 of the printed bill of complaint, and to which letter this defendant prays leave to refer; that afterwards, in compliance with the request of said Commissioner, the Governor of Iowa did furnish to said Commissioner the lists called for by the letter of the said Commissioner, duly certified, which said lists so furnished and certified by the Governor, are now on file in the office of the Commissioner of the General Land Office, and to which, for greater certainty, this defendant prays leave to refer, and that said lists covered and embraced and included all the lands now claimed by plaintiff in this action as against the said Des Moines Navigation and Railroad Company and its grantees.

And this defendant, further answering, admits that, after the passage of the act of July 12, 1861, Samuel G. Wolcott, a citizen of New York, claiming the east half of section 17, township 88 (instead of 87, as complainant's bill alleged), range 27 west, in the said county of Webster, under purchase from the said Des Moines Navigation and Railroad Company, brought suit in the circuit court of the United for the southern district of New York against said company for a breach of warranty of title, and that in said action the title of the said Des Moines Navigation and Railroad Company was, by the Supreme Court of the United States, held good and valid; and this defendant, upon information and belief, denies that the said suit was designed and intended by the parties thereto as an agreed case to settle the construction of an act of Congress, in which bill the plaintiff and defendant had the same interest adversely to the claim of plaintiff in this suit, and also, upon such information and belief, denies that both parties jointly paid the costs, and that the attorneys employed were both really interested on the same side, and
123 that the object was to obtain an adjudication of the rights of the plaintiff and others who were like situated, and who were not before the Court; and he expressly alleges and avers that said suit was commenced in good faith, and for the purpose indicated by the pleadings therein, and was conducted without collusion and without any fraud upon the rights of the plaintiff or others interested or claiming to be interested therein.

And this defendant, further answering, alleges and avers that after the commencement of said suit by said Wolcott against the said Des Moines Navigation and Railroad Company, and before the same was determined, and while the same was pending, the said

Dubuque and Sioux City Railroad Company, under which the plaintiff herein claims title, applied to the court to intervene as a party interested in the controversy therein; that such application was granted and the said railroad company made a party defendant; that the said railroad company, the grantors of the plaintiff herein; as this defendant is informed and believes to be true, and therefore alleges and avers, made such application to be made party defendant, and was so made such party with the full knowledge and consent and at the desire and instance and request of the said Iowa Homestead Company, the complainant in this action, for the purpose of protecting the interest of said homestead company, as well as those of the said railroad company, in the premises; that, on application, time was given the said railroad company to prepare for the trial thereof; that the said railroad company, as such party, was fully heard and represented, and its claims to said lands and title thereto litigated by said company, and passed upon and decided by said Supreme Court adversely to the claims of said railroad company; that in such action the said railroad company relied upon and argued the same title or claim to title as is now urged and relied upon by the plaintiff herein; that the decision of the said Court in said action is conclusive and decisive and *res adjudicata*, so far as the claims of plaintiff in this action is concerned, and this defendant avers and insists that the said action and the decis-
124 ion of the said court therein is a full and perfect and complete bar to the maintenance of this action by the plaintiff and decisive of the plaintiff's claim herein.

And this defendant, further answering, admits that after the settlement of the State with the Des Moines Navigation and Railroad Company, 1858, the said Des Moines Navigation and Railroad Company conveyed certain parcels of the land claimed by plaintiff to Samuel G. Wolcott, Wm. B. Welles, Roswell S. Burrows, Edwin C. Litchfield, Wm. J. McAlpine, Richard B. Chapman, Electus B. Litchfield, Edward Wade, and John Stryker, but he denies that said company conveyed any portion of said lands to the defendants, Albert H. Tracy, Francis W. Tracy, and Harriet Tracy, and, upon information and belief, alleges that the said defendants, Albert H. Tracy, Francis W. Tracy and Harriet Tracy, hold and acquired their title to the lands claimed by them under and through Albert H. Tracy, the father of the defendants, Albert H. and Francis W., and the husband of the said Harriet Tracy, who was a grantee of said company; and this defendant alleges and avers that he, as well as the other grantees of the said Des Moines Navigation and Railroad Company, was and is a *bona fide* purchaser of the tracts respectively conveyed to them by the said Des Moines Navigation and Railroad Company under the State of Iowa, and he expressly denies the allegation in the complainant's said bill of complaint averring that he or either of the other defendants are not *bona fide* purchasers of the tracts claimed by them respectively.

And this defendant, further answering, denies that the defendants, who are purchasers from the Des Moines Navigation and Railroad Company, received or hold the title to the lands respectively claimed

by them for their share or shares of stock in said corporation, as in complainant's bill alleged, and denies that he is, or that any of such defendants are, purchasers, with notice of complainant's alleged equities; and he expressly alleges and avers that the said Des Moines Navigation and Railroad Company was and is a *bona*
125 *fide* purchaser of all the lands conveyed to it by the State of Iowa, as herein stated, including those in dispute in this action, for a good and valuable consideration, without notice; that said consideration is found and appears in the said contract between the State of Iowa and the said company under date of June 9, 1854, herein, and in complainant's bill referred to, and the work and labor performed and expenditures incurred by said company thereunder, and the further consideration set forth and appearing in the said joint resolution of March 22, 1858, and the settlement thereunder; that the said act of May 15, 1856, which complainant claims to be the source and foundation of his title, was not passed until nearly two years after the date of said contract between the State and said company; that prior to and at the time of the passage of the joint resolution of March 22, 1858, and the settlement thereunder, and the execution of deeds or patents of the said lands by the State to said company, as herein stated, neither the agents and officials of the United States or of the State, nor the Dubuque & Pacific Railroad Company, nor the Dubuque & Sioux City Railroad Company nor their grantees, had ever made or asserted any title whatever to any of the lands so sold and conveyed to the Des Moines Navigation and Railroad Company, as herein stated, but the same were then held and claimed by the State under the said grant of August 8, 1846, and not otherwise.

And this defendant, further answering, says that as to the allegations in said complainant's bill of complaint touching and relating to the claim and title of the Des Moines Valley Railroad Company to parts and portions of the lands claimed by said company and by the plaintiff in this action (except so far as the same are conferred by the joint resolution of the General Assembly of the State of Iowa of March 22, 1858, and set forth as an exhibit to complainant's bill) this defendant is ignorant and uninformed, save by the complainant's said bill of complaint, and as to those allegations he leaves complainant to make such proof as he shall be advised is material and necessary, and this defendant disclaims all title to or interest in such parts and portions of said lands.

126 And this defendant, further answering, says that he admits that the copies of instruments annexed as exhibits to the complainant's bill of complaint, so far as the same are pertinent and bear upon the controversy between the plaintiff and the Des Moines Navigation and Railroad Company and its grantees herein, are substantially copies of the originals of which they respectively purport to be copies.

And this defendant, further answering, denies that the title of the complainant to the lands claimed by these defendants and by the Des Moines Navigation and Railroad Company and its grantees is superior and paramount to that of the said company and its grantees,

and he expressly denies that the plaintiff, by reason of the matters in said complainant's bill of complaint contained as against the said Des Moines Navigation and Railroad Company and its grantees, has any title whatever to the said lands claimed by said company and its several grantees respectively.

And this defendant, further answering, says that as to whether or not the said complainant and its vendees has been in possession of and paid taxes on the lands claimed by them since 1861 to the amount of $80,000 this defendant is ignorant and uninformed save by the said complainant's bill of complaint, but he expressly avers that the possession of the said lands by the said complainant and its vendees since 1861 is and has been unauthorized and wrongful, and that the said complainant should be required to account for the use and rents and profits thereof to the proper owners, respectively, during the time they have been in such possession; and he also expressly alleges and avers that all taxes whatsover paid by said complainant have been paid by complainant voluntarily, with a knowledge of all the facts, and that the complainant is not entitled to have the same or any part thereof refunded.

And this defendant, further answering, denies that the defendants in this action have commenced actions at law in this court against persons claiming title through plaintiff, or otherwise to eject them from lands owned by the plaintiff, but he admits and avers that the said defendants have commenced actions in the district *counties* of Webster and Hamilton, in their respective names, both at law and in equity, against persons in possession and persons claiming title to recover possession, or to quiet titles to the tracts of the said lands claimed by said defendants in said counties of Webster and Hamilton.

127

And this defendant, further answering, alleges and avers that on the 8th day of August, 1846, the Congress of the United States passed an act entitled "An act granting certain lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines river, in said Territory;" that by the first section thereof there was granted to the said Territory the one equal moiety in alternate sections of the public lands (remaining unsold and not otherwise disposed of, encumbered, or appropriated) in a strip five miles in width on each side of said river, to be selected within said Territory by an agent or agents to be appointed by the Governor thereof, subject to the approval of the Secretary of the Treasury of the United States; that by the fourth section of said act it was enacted and provided "that whenever the Territory of Iowa shall be admitted into the Union as a State the land hereby granted for the above purpose shall be and become the property of said State for the purpose contemplated in this act and no other, provided the Legislature of the State of Iowa shall accept the said grant for the said purpose" (and to which said act for greater certainty this defendant refers); that subsequently, to wit, in December, 1846, the said Territory of Iowa was admitted into the Union as a State, and that after its admission as such the State of Iowa, by a joint resolution of the General Assembly thereof, passed and approved January 9, 1847,

accepted the said grant for the purposes in said act mentioned and specified.

And this defendant further shows that pursuant to and in accordance with the provisions of the said act of August 8, 1846, the Governor of Iowa appointed agents, who selected under the
128 said act the lands situated and lying in the alternate odd-numbered sections within the limits of the said grant for and in behalf of the State, and that such selections when made were duly reported to the Commissioner of the General Land Office, and were duly approved by him and by the Secretary of the Treasury of the United States; that such selections and approval were made in the year 1846, and after such approval, and on the 17th day of October, 1846, the Commissioner of the General Land Office instructed the register and receiver in Iowa, having charge and control over lands, to reserve from sale or entry of any kind all the unsold and unappropriated lands in the sections selected by the State of Iowa as aforesaid; that on the 23d day of February, 1848, the Commissioners of the General Land Office held and decided that, under the said grant in said act of August 8, 1846, contained, the State of Iowa was entitled to the alternate sections within five miles of the Des Moines river, throughout the whole extent of that river within the limits of Iowa, and that such decision is found and contained in the letter of Richard M. Young, Commissioner, a copy whereof is set out in the printed bill of complaint, at pages 56 & 57 thereof, and to which this defendant for greater certainty prays leave to refer.

And this defendant, further answering, alleges and avers that on the 2d day March, 1849, the Secretary of the Treasury of the United States held and decided that the said grant in the said act of August 8, 1846, contained, and thereby contemplated, "extended on both sides of the said river, from its source to its mouth, but not to lands on said river in the State of Missouri," as will appear more fully by the letter of R. J. Walker, Secretary of the Treasury, to A. C. Dodge and others, a copy of which is set out in the printed bill of complaint, on page 61 thereof, and to which this defendant for greater certainty prays leave to refer; that in pursuance and in accordance with the said decision of the Secretary of the Treasury the said Commissioner of the General Land Office, on the 1st day of June, A. D. 1849, directed and instructed the said register
129 and receiver of the public lands at Iowa City, in the State of Iowa, to withhold from sale all lands situated in the odd-numbered sections within five miles of that (Des Moines) river above the Raccoon Forks, as will more fully appear by the letters of R. J. Walker to R. M. Young, Commissioner, and R. M. Young, Commissioner, to register and receiver at Iowa City, copies of which are set out in the printed bill of complaint, on page 62 thereof, and to which for greater certainty this defendant prays leave to refer; that such direction and order of the Commissioner of the General Land Office was received by the register and receiver of the United States land office at Iowa City on the 16th day of June, 1849, and the said order was adopted and approved by the Secretary of the Treasury of the United States, the other officers of the United

States, including the heads of departments having the charge and control of the public lands, and the same was continued, carried out, enforced, and acted upon by all succeeding Commissioners of the General Land Office, and by all succeeding Secretaries of the Treasury and of the Interior having charge and control of the public lands, until the said lands lying in such alternate odd-numbered sections were duly certified and approved to the State of Iowa under and for the purpose of said grant of August 8, 1846, as more fully hereafter stated, as will more fully appear by reference to the original letters, orders, and decisions of said Commissioners and Secretaries referred to, and to which for greater certainty this defendant prays leave to refer.

And this defendant, further answering, alleges and avers that all of the said lands which had been surveyed, lying in the said alternate odd-numbered sections above the Raccoon Forks, were, by the Commissioner of the General Land Office and by the Secretary of the Interior, in October, 1851, March, 1852, December, 1853, and January, 1854, duly certified and approved to the State of Iowa as having passed to said State under the said act of August 8, 1846, by lists or schedules thereof duly certified and approved and delivered to the State of Iowa by the said Commissioner of the General
130 Land Office, under and with the approval and endorsement of the Secretary of the Interior, as will more fully appear by the said certified lists, to which for greater certainty the defendant prays leave to refer.

And this defendant, further answering, alleges and avers that the said Commissioner and Secretary of the Interior were the officers by law authorized and charged with the duty of approving and certifying the said lands to the State under said grant, and that the lists or schedules so certified and approved to the State of Iowa under said grant embraced and included and covered the land claimed by the complainant in this action.

And this defendant further alleges that the said lists and the certificates and the approval thereof and of the lands therein described to the State by the said Commissioner and Secretary of the Interior, under the said grant of August 8, 1846, as aforesaid, have never been revoked, recalled, cancelled, or annulled, but are still outstanding and operative and in full force, and have since been fully confirmed by the Congress of the United States by a joint resolution thereof approved March 2, 1861, and by an act thereof passed and approved July 12, 1862; that at the time the said certified lists or schedules were prepared by the Commissioner of the General Land Office the lands therein were duly marked and entered upon the books and plats of the General Land Office as having been granted to the State of Iowa for the purpose of the improvement of the Des Moines river, under the said act of August 8, 1846, and the same, since the said order of the said Commissioner on the 1st day of June, 1849, as aforesaid, have always and continually been considered, held, and treated by the several Departments of the Government as withheld and reserved from grant, sale, private pre-emption, and homestead entry; that said lands, in fact, since the 1st of June, 1849, have been legally and

JOHN STRYKER VS. GEORGE CRANE, ADMINISTRATOR, &c. 87

continuously reserved by the United States by its duly constituted officers and departments, and the said order of reservation has never in any wise, form, or manner, been recalled, revoked, cancelled, or annulled; that at various times and dates since the said 1st
131 day of June, 1849, the Commissioner of the General Land Office and the Secretary of the Interior, being thereunto by law duly authorized and empowered, have recognized and approved and affirmed and continued the said order of reservation, and the same is still in force; all of which will more fully appear by the respective and several orders and letters and official papers and documents of said officers relating to the matter of such reservation, and to which for greater certainty this defendant prays leave to refer.

And this defendant, further answering, alleges and avers that subsequent to such reservation aforesaid, and after said lands were so certified and approved to the State of Iowa under the said grant of August 8, 1846, as aforesaid, and on or about the 9th day of June, 1854, the State of Iowa entered into a contract in writing with said defendant, The Des Moines Navigation and Railroad Company, for the sale, transfer, and conveyance of all of the said lands in said certified and approved lists and schedules contained and described (except such parts and portions thereof as the State had sold and disposed of prior to the 23d day of December, 1853), and to which said contract, for greater certainty, this defendant prays leave to refer.

And this defendant further alleges that afterwards, for the purposes of a settlement with the Des Moines Navigation and Railroad Company under the said contract aforesaid, the General Assembly of the State of Iowa, on the 22d day of March, 1858, passed and adopted the joint resolution entitled "Joint resolution containing proposition for a settlement with the Des Moines Navigation and Railroad Company," a copy whereof is set out in the printed bill of complaint, at pages 116, 117, 118, & 119, and to which, for greater certainty, this defendant prays leave to refer; that the said Des Moines Navigation and Railroad Company accepted the propositions for the settlement in the said joint resolution contained, in the manner therein specified and provided, and duly performed and complied with all the terms and conditions imposed upon it in and by said resolution, and in consideration thereof and of the said
132 contract, and the work done by said company thereunder, and in pursuance of said joint resolution and the settlement thereunder, the State of Iowa, on or about the 3d day of May, 1858, by its deeds or patents duly executed and authenticated and delivered, granted, sold, and conveyed to the said company in fee-simple all the said lands in said certified lists described which had not been sold by the State under the said grant of August 8, 1846 (excepting about twenty-five thousand acres lying immediately above the Raccoon Forks), including the lands lying in the said counties of Webster and Hamilton, and claimed by the complainant in this action, and as will more fully appear by reference to said patents or deeds, and to which this defendant prays leave to refer.

And this defendant, further answering, alleges and avers that the said patents or conveyances from the State were made, executed, and delivered by the proper officers under the said joint resolution and the authority of the State, and upon a good and valuable consideration, and that the said company thereby became and was and is a *bona fide* purchaser of the said lands under the State of Iowa; that subsequent to such conveyance to the said Des Moines Navigation and Railroad Company by the State of Iowa aforesaid the said company, for a valuable and adequate consideration to it paid by this defendant, duly bargained, granted, sold, and conveyed to this defendant about eight thousand and five hundred acres of the said lands in Webster and Hamilton counties now claimed in this action by the complainant, as will more fully appear by reference to the said deed from said company to this defendant, and to which this defendant prays leave to refer, and that this defendant is a *bona fide* purchaser of said tracts so conveyed to him by said company under the State of Iowa.

And this defendant, further answering, alleges and avers that at the December term of the Supreme Court of the United States of the year 1859, and late in the spring of 1860, the said Court held and decided that the grant contained in and contemplated by said act of August 8, 1846, did not extend above the Raccoon
133 Forks; that at the subsequent session of the Congress of the United States that body, for the purpose of protecting the purchasers under the State, including the Des Moines Navigation and Railroad Company and its grantees, and of carrying out and giving to said act of August 8, 1846, the construction and interpretation which had been given to said grant by the Commissioner of the General Land Office and the Secretary of the Treasury and the other officers as aforesaid, and of confirming the title to the same in the State and its grantees under the act of August 8, 1846, and on the 2d day of March, 1861, passed and adopted the joint resolution entitled "Joint resolution to quiet titles in the State of Iowa," a copy whereof is set out in complainant's bill of complaint, at page 120 thereof.

And this defendant, further answering, alleges and avers that for the purpose and with the design and intent of extending the said grant of August 8, 1846, to the northern boundary of the State, and of confirming the same and the title to the State and its grantees thereunder, and for the further purpose of giving and adopting and carrying out the construction which had been placed upon and given to said act of August 8, 1846, by the said several officers and departments of the United States, and protecting the Des Moines Navigation and Railroad Company and the grantees of the State, on the 12th day of July, 1862, passed and enacted the act entitled "An act confirming a land claim in the State of Iowa, and for other purposes," a copy whereof is in substance set out in complainant's said bill of complaint, on page 126 thereof, and to which said act this defendant refers.

And this defendant, further answering, expressly alleges and avers that, by the said act of August 8, 1846, the reservation thereunder

as aforesaid, the acts of the several officers and departments of the United States and the State of Iowa aforesaid, the said contract of June 9, 1844, between the State and the said Des Moines Navigation and Railroad Company, the joint resolution of the General Assembly of the State of Iowa of March 22, 1858, and the settle-
134 ment and conveyances by the State as aforesaid, the joint resolution of Congress of March 2, 1861, and the act of Congress of July 12, 1862, directly extending and confirming the grant of August 8, 1846, as aforesaid, and the other matters above set forth, the Des Moines Navigation and Railroad Company acquired and obtained the full, complete, and absolute title thereto, and are entitled to have, hold, possess, and enjoy the respective tracts covered by the respective deeds.

And this defendant, further answering, denies that under the said act of May 15th, 1856, in said complainant's bill of complaint referred to, and the act of the General Assembly of the State of Iowa approved July 14, 1856, and also in complainant's said bill of complaint referred to, or either of said acts, the State of Iowa acquired any title as trustee or otherwise to the said lands in complainant's bill charged to be claimed by the Des Moines Navigation and Railroad Company and its grantees, and also in said bill claimed to be the property of complainant as against the Des Moines Navigation and Railroad Company; and this defendant expressly avers and insists that all of the said lands in the alternate odd-numbered sections within five miles of the Des Moines river and within the limits of the grant to the State for the use of the Dubuque and Pacific Railroad Company, as contemplated by said act of May 15th, 1856, were expressly reserved, and never in anywise passed to the State under the said act, as trustee or otherwise, in any *matter* whatever; and he alleges and avers that the title to the said lands in such odd-numbered sections is now, and for a long time has been, by reason of matters in this answer stated and set forth, fully, completely, and absolutely vested in the said Des Moines Navigation and Railroad Company and its grantees, and that as against the claim of the said company and its grantees the said complainant has no title to or interest in the said lands whatsoever.

And this defendant denies that the said complainant is entitled to the relief prayed in his bill of complaint herein or any part thereof.

And this defendant says that he denies each and every
135 material allegation in complainant's bill of complaint contained not hereinbefore well and sufficiently answered, confessed and avoided, traversed or denied, except the allegations relating to the Des Moines Valley Railroad Company and the lands claimed by said company and in which this defendant claims no interest.

All of which matters and things this defendant is ready to aver, maintain, and prove as this honorable court may direct, and prays that, by reason of the said several matters aforesaid, the title of the defendant, The Des Moines Navigation and Railroad Company, to the lands herein claimed by said company be, by the decree of this

court, confirmed and in all things held and declared valid and paramount, and that the respective titles of the other defendants named in this answer to the several tracts claimed by them, respectively, be also, by a decree of this court, confirmed and held and declared valid and paramount and absolute, and that these defendants may have such other and further relief as is agreeable to equity and the practice of this court, and that they be hence dismissed with their costs herein most wrongfully sustained.

J. M. ELLWOOD,
Sol'r for Defendant.
D. O. FINCH, *Of Counsel.*

The following copies of the certificates under which the lands in controversy are claimed by the grantors of the Iowa Homestead Company were read in evidence by the defendant:

GENERAL LAND OFFICE, *Feb. 26th*, 1863.

I, J. M. Edmonds, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages one to four, inclusive, is a true and correct list of the tracts of land within the six-mile limits granted to the State of Iowa by the act of Congress approved the 15th day of May, 1856, entitled An act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State, being the vacant and unappropriated lands in the alternate sections designated by odd numbers for six sections in width on each side of the railroad "from the city of Dubuque to a point on the Missouri river near Sioux City,
136 with a branch from the mouth of the Tete Des Morts to the nearest point on said road," known as the Dubuque and Sioux City (late Dubuque and Pacific) railroad, within the State of Iowa, and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of the 15th of May, 1856, subject to all its conditions, and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first above written.

[L. S.] J. M. EDMONDS,
Commissioner.

(Written in red ink on margin:) Making in the aggregate fifty-six thousand four hundred seventy-three acres and thirty-two hundredths of an acre.

DEPARTMENT OF THE INTERIOR, *April 7th*, 1863.

Approved, subject to the conditions and rights above mentioned.
J. P. USHER, *Secretary.*

GENERAL LAND OFFICE, *Feb. 26th*, 1863.

I, J. M. Edmonds, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages one to two, inclusive, is a

true and correct list of the tracts of land selected by the agent of the State of Iowa outside of the six and within the fifteen mile limits under the act of Congress approved the 15th of May, 1856, entitled "An act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State," the said selections being from the lands of the United States in the alternate sections designated by odd numbers most contiguous to the tier of sections within six sections in width on each side of the railroad "from the city of Dubuque to a point on the Missouri river near Sioux City, with a branch from the mouth of the Tete Des Morts to the nearest point on said road," known as the Dubuque and Sioux City (late Dubuque and Pacific) railroad, and being in lieu of the lands in the alternate sections designated by odd numbers within said six sections — width on each side of said road which the United
137 States had legally sold or to which the right of pre-emption had legally attached prior to the period at which the right of the State inured under said grant; and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of the 15th of May, 1856, subject to all its conditions and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first hereinabove written.

J. M. EDMONDS,
Commissioner.

DEPARTMENT OF THE INTERIOR, *April 7th*, 1863.

Approved, subject to the conditions and rights above mentioned.
J. P. USHER, *Secretary.*

(Written in red ink on margin:) Making in the aggregate twenty-one thousand and sixty-one acres and ninety-one hundredths of an acre.

GENERAL LAND OFFICE, *October 31st*, 1864.

I, J. M. Edmonds, Commissioner of the General Land Office, do hereby certify that the foregoing, on page one, is a true and correct list of the tracts of land within the six-mile limits granted to the State of Iowa by the act of Congress approved the 15th of May, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," being the vacant and unappropriated lands in the alternate sections designated by odd numbers for six sections in width on each side of the railroad from the city of Dubuque to a point on the Missouri river near Sioux City, with a branch from the mouth of the Tete Des Morts to the nearest point on said road, known as the Dubuque and Sioux City (late Dubuque and Pacific) railroad, within the State of Iowa, and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of the 15th of May, 1856, subject to
138 all its conditions and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year hereinabove written.

[L. S.] J. M. EDMONDS,
Commissioner.

DEPARTMENT OF THE INTERIOR, *December 13th*, 1864.

Approved, subject to the conditions and rights above mentioned.
J. P. USHER, *Secretary.*

(Written in red ink on margin:) Making in the aggregate one hundred and fifty-nine acres and sixty-hundredths of an acre.

I, Aaron Brown, register of the State land office of the State of Iowa, do hereby certify that the foregoing are true copies of the certificates affixed to supplemental lists, numbered 33, 34, and 43, on file in this office, embracing the odd-numbered sections of land within the five-mile limits of the Des Moines river, which were approved and certified to the State of Iowa by the Department of the Interior, under act of Congress of May 15th, 1856, to aid in the construction of a railroad from the city of Dubuque to a point on the Missouri river near Sioux City, with a branch from the mouth of the Tetes Des Morts to the nearest point on said road, and that said lists embrace in the aggregate seventy-seven thousand six hundred and ninety-four and eighty-three hundredths of an acre (77,694.83).

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office this 26th day of February, 1872.

[SEAL.] AARON BROWN, *Register.*

Endorsed: "Edward K. Goodnow *vs.* John Stryker. Appeal from Webster circuit court.

It is hereby agreed that the above-entitled cause may be submitted and tried in the supreme court of Iowa upon the foregoing abstracts of the appellant & appellee; that said abstracts contain all the evidence introduced or used by the parties at the trial of said cause in the said circuit court of Webster county, Iowa.

GEORGE CRANE,
Att'y for Pl'ff.
THEO. HAWLEY,
Att'y for Def't."

139 And said cause was duly submitted to said supreme court of Iowa upon the foregoing record, together with the arguments, in print and orally, of the counsel of the respective parties; and said court, after due consideration, filed its opinion in writing, reversing the judgment of the lower court, said opinion being in the words and figures following, to wit:

In the Supreme Court of Iowa. December Term, 1882.

EDWARD K. GODNOW, Appellant,
vs.
JOHN STRYKER. } 9890.

Appeal from Webster circuit court.

DECEMBER 15TH, 1882.

This action was brought by the plaintiff, as assignee of the Dubuque & Sioux City Railroad Company, to recover for taxes
140 paid by that company on certain land in Webster county belonging to the defendant Stryker. The Dubuque & Sioux City R. R. Co. claimed to be the owner of the land at the time the taxes were levied, and which land it conveyed by a deed of warranty. The circumstances under which the taxes were paid were for the most part substantially the same as those under which the taxes were paid in Goodnow *vs.* Moulton, 51 Iowa, 555. The several matters of defense will be set out in the opinion. The court dismissed the plaintiff's petition, and he appeals.

GEORGE CRANE,
For Appellant.
THEODORE HAWLEY AND
C. H. GATCH,
For Appellee.

ADAMS, *J.:*

I. In Goodnow *vs.* Moulton the taxes were paid by the Iowa Homestead Co. and at a time when that company claimed to be the owner of the land, and it was found that the claim was made in good
141 faith, though its validity was disputed by the defendant. Mr. Justice Seevers, in his opinion in that case, said: "When the taxes were paid it was believed by said company that it was the owner of the lands under the act of Congress known as the railroad grant."

The defendant contends that the case at bar differs from that case, because the certification of the lands under which the plaintiff claims was suspended until April, 1863, and the taxes paid being for the years 1861, 1862, and 1863, the plaintiff should not be heard to say that his assignor paid the taxes in good faith. The taxes, however, it appears, were not paid until after April, 1863. Possibly the defendant had in mind that the assessment of the taxes for 1861 and 1862, being made within the time the certification was suspended, were invalid, but he does not raise such point in his argument, and we do not, therefore, consider it. So far, then, as the circumstances
142 are concerned under which the taxes were paid, we have to say that we see nothing in them to distinguish the case from Goodnow *vs.* Moulton, and it follows that we are justified in holding that there was an implied promise on the part of the defendant to reimburse the plaintiff's assignor.

II. The defendant alleges that the plaintiff is, by a prior adjudication in an action *in an action* in which The Iowa Homestead Co.

was plaintiff and The Des Moines Navigation and R. R. Co. and the present defendant Stryker and others were defendants, —, the decision in which case is reported in 17 Wallace, 153. It appears that the lands on which the taxes were paid were a part of the lands in controversy in that case, having been conveyed, before the commencement of the action by plaintiff's assignor, by deed of warranty, to The Iowa Homestead Co., the plaintiff in that action. It appears also that the Iowa Homestead Co., having paid cer-
143 tain taxes on the same land, prayed that the defendant Stryker be decreed to reimburse it for such payments if it should be decreed that he was the owner of the land. The defendant Stryker was decreed to be the owner of the lands, but no recovery was allowed against him for the taxes paid. Now, while the taxes sought to be recovered in the case at bar were no part of the taxes sought to be recovered in that case, and neither the plaintiff nor his assignor was a party to that action, yet it is said that the adjudication is sufficient to bar a recovery in this case.

It is, perhaps, not to be denied that if the court correctly held in that case that the Iowa Homestead Co. was not entitled to recover for taxes paid, it would follow, as a matter of law, that the plaintiff in this case is not entitled to recover, but since the decision in Goodnow *vs.* Moulton we cannot follow the decision in Iowa
144 Homestead Co. *vs.* Des Moines Navigation & R. R. Co. *et. al.* as authority; nor, so far as the point is concerned which we are now considering, is it claimed that we should. The claim is that the taxes in question were actually covered by the adjudication in that case. In our opinion this claim cannot be sustained. The taxes in question were not only no part of the taxes sought to be recovered in that action, but they were not paid by the plaintiff in that action, as *is* Goodnow *vs.* Litchfield, 13 N. W. Reporter, 86. They were paid by the Dubuque & Sioux City R. R. Co., and neither it nor its assignee, the present plaintiff, was a party to that action. The defendant contends that the Dubuque & Sioux City R. R. Co. was substantially a party to that action, because the plaintiff in the action claimed a part of the lands by deed of warranty from the Dubuque & Sioux City R. R. Co., and notified that company of the pendency of the action. The effect, however, of such notifi-
145 cation would be only to bind the Dubuque & Sioux City R. R. Co. by the adjudication in respect to title, in that the Dubuque & Sioux City R. R. Co. was interested, by reason of its deed of warranty, but it had no interest in the taxes sought to be recovered. So far as the issue was concerned, involving a right of recovery for the taxes, it was in no possible sense a party. The adjudication in that case does not operate as a bar in this.

III. The defendant pleads the statute of limitations. He avers that he is a resident of the State of New York, and that in that State action upon contract not expressed in writing is barred in six years. He relies, as we understand, upon section 2746 of the revision, which provides "that when a cause of action has been fully barred by the laws of the country where the defendant has previously resided, such bar shall be the same defense here as though

it had arisen under the provisions of this chapter." But in this case the cause of action arose in this State, and in 1870 the
146 statute cited was amended so as to make it inapplicable where the cause of action arose in this State, chapter 167 of the laws of 1870. Unless, then, the action became barred before the amendment it did not become barred under the statute relied upon. The payments appear to have been made Dec. 9, 1863, January 20, 1864, and October 31, 1866, respectively. But we do not think that a cause of action accrued upon each payment at the time it was made, nor upon all at the time the last one was made. The implied promise upon which the action is based arose by reason of the circumstances. See Goodnow vs. Moulton, above cited. One very important circumstance was that the title was involved in serious litigation, which was not terminated in the defendant's favor until 1873. We do not think that the defendant's promise could be regarded as absolute. He certainly never promised to pay these taxes in case the title should be adjudicated to be in the Iowa Homestead Co.,
147 and no one had any reason to suppose that he intended to incur any such liability. The most that can be said in regard to the defendant's implied promise is that it was based upon a contingency, and, being so, it was not enforcible until the contingency had happened. We think that the cause of action did not arise until the termination of the litigation by which the title was adjudged to be in the defendant. If the homestead Co. had before the final decision abandoned the litigation and conceded the title to be in the defendant it may be that a cause of action would then have accrued. We do not say that a final decision was necessary. We merely say that we do not think that the defendant could be understood as promising that he would pay the taxes sooner than the title was assured to him, either by litigation or concession.

Such being our view, it appears to us that the cause of action did not accrue until 1873, which was after the amendment, and
148 the defendant being a non-resident, the action is not barred. We think that the plaintiff is entitled to recover the amounts paid, with interest thereon from the time of payments, respectively, and to have the same declared a lien upon the land.

Reversed.

Upon a petition for rehearing said cause was again considered by said court and the former opinion adhered to. The opinion of said court upon rehearing was filed December 7th, 1883, and is in the words and figures following, to wit:

"*On Rehearing.*

EDWARD K. GOODNOW, Appellant, *vs.* JOHN STRYKER.

Appeal from Webster circuit court.

149 George Crane, for appellant; Theodore Hawley and C. H. Gatch, for appellee.

ROTHROCK, *J.*:

I. This cause has again been presented to us upon a petition for rehearing, and has also been argued orally by counsel for both parties.

It is claimed while, as a matter of law, the lands were subject to taxation for the years 1861 and 1862, yet they were not subject to taxation under the grant under which the railroad company was then claiming title to them, and it was, therefore, neither the right nor duty of the railroad company to pay taxes which were not, and never could, as against it, have become valid; but in the case of Homestead Company *vs.* Webster County, 21 Iowa, 221, and Dubuque & Pacific R. R. Co. *vs.* Webster County, *Ib.*, 235, this court held that it was the duty of the R. R. Co. to pay these taxes. It can-
150 not, therefore, be said that the taxes in question were paid voluntarily or officiously. It is abundantly evident all through the record in these tax cases that the railroad company and its assignees at all times, down to the final adjudication against them in the Supreme Court of the United States, acted in the belief that the land passed to them under the railroad grant. The fact that during the years 1861, 1862, and 1863 there were conflicting claims to the lands, and that for a part of that time the lands were withheld from certification by reason thereof, and were not taxable, cannot, after the repeated decisions in this court that the lands were taxable for those years, control the rights of the parties to this litigation.

II. It is insisted that the statement in the foregoing opinion that the taxes for which recovery is sought in the case at bar are no part of the taxes which were sought to be recovered in the case of Homestead Co. *vs.* The Valley R. R. Co., 17 Wal., 166, is erroneous.
151 Whether this be correct or not, we think, can make no difference upon the question of former adjudication, because, in our opinion, the Dubuque & Sioux City R. R. Co., the plaintiff's assignor, was in no sense a party to that action, so far as the question of taxes is involved. We are content with what is said in the foregoing opinion upon that subject.

III. Lastly, it is again urged that the claim for taxes was barred by the statute of limitations when the action was commenced. In the foregoing opinion it is held that the right of action did not accrue until the termination of the litigation by which the title was adjudged to be in the defendants. It is claimed that this rule is erroneous, and that rights of action accrued upon the payments at the time they were made. We are not disposed to adopt the rule contended for. The case is a peculiar one. The controversy between the railroad grant and the river grant continued for many years.
152 These lands were held by Federal authority to belong first to one grant and then to the other, and then again to the other, and the title was not finally and conclusively settled until the decision in the case of Homestead Co. *vs.* Valley R. R., 17 Wal., 153. If the plaintiff or his assignor had commenced an action before that time to recover these taxes it would have been a virtual abandonment of all claim of title to the land. The conflicting decisions as to the

title warrants the belief that those parties claiming under the railroad grant asserted title to the land in good faith to the last. Under these circumstances we feel warranted in adhering to the rule that the statute did not commence to run until the final adjudication, in Dec., 1872.

It is claimed, however, that the question of title was finally decided in Dec., 1866, in the cases of Walcott *vs.* Des Moines Co., and Des Moines Co. *v.* Burr, 5 Wallace, 681 and 689. We think it is sufficient, in regard to this feature of the case, to repeat what was said of the Walcott case in Goodnow *vs.* Moulton, 51 Iowa,
153 556: 'This action (the Wolcott case) was between parties both of whom claimed under the river grant, and it was held that the title to such lands had passed thereunder, but as no one claiming under the railroad grant was a party to the action it cannot be said that the decision was of any bearing as to them.'

It is true that counsel of Dub. & S. C. R. R. Co. were allowed to appear and to be heard in argument in the Walcott and Burr cases in the Supreme Court of the United States, but the railroad company was not a party to the record. It is no unusual thing for counsel interested in a like question to be permitted to appear in the argument of a case, but that any right of his client is adjudicated in the case because of such appearance cannot be admitted.

The former opinion is adhered to and the judgment is reversed."

154 And afterwards, to wit, on the 31st day of January, 1884, it still being of the regular December term, 1883, of said supreme court of Iowa, the following final judgment and decree was duly approved by said court and entered of record, to wit:

"Webster Circuit Court.

EDWARD K. GOODNOW
vs.
JOHN STRYKER. } 9890.

This cause coming on for final hearing, and the court having duly considered the issues, the evidence, and the arguments of counsel, finds the issues in favor of the plaintiff, and further finds that said plaintiff is entitled to recover the sums of money paid by the plaintiff's assignor, and interest thereon from the times said several payments were made; the court also finds and decides that the plaintiff is entitled to a lien on the real estate on which said taxes were paid.

It is therefore ordered, adjudged, and decreed that said
155 Edward K. Goodnow, plaintiff, have and recover from the defendant, John Stryker, the sum of eight hundred and twenty-eight dollars and costs of suit, taxed at one hundred twenty-four & $\frac{15}{100}$ dollars, and that said claim or decree is hereby made a special lien on the following-described lands: The northwest quarter of section 19, township 88, range 27; the northwest quarter of section 5, township 88, range 28; the south half of the northeast quarter of section 29, township 89, range 28; the east half of the southwest quarter and the northwest quarter of the northwest

quarter and the southeast quarter of section 7, township 90, range 28; and lots 1 and 2, in section 13, township 90, range 29, all in Webster county, Iowa, from the 28th day of April, 1873; that plaintiff have special execution, and that said real estate be sold according to law."

156 And afterwards, to wit, March 15th, 1884, the defendant Stryker filed in said supreme court a motion for a supplemental decree or certificate, said motion being in the words and figures following, to wit:

"Supreme Court of the State of Iowa.

E. K. GOODNOW *vs.* JOHN STRYKER.

Comes now the defendant, John Stryker, and submits to the court for approval and entry herein, supplemental to the decree heretofore entered, the annexed certificate and order upon which he may, if so advised, apply for a writ of error upon which to remove this cause to the Supreme Court of the United States upon what he conceives to be 'Federal questions' involved in the decision made by this court, and in support of his application refers to the annexed affidavit of C. H. Gatch.

C. H. GATCH,
Att'y for John Stryker."

Endorsed: "Due service of the within, with copy of same, is hereby accepted this 13th day of March, 1884. Geo. Crane, att'y for pl'ff."

157 And on the 10th day of April, 1884, said motion was sustained, and supplemental decree or certificate ordered to be made a part of the record herein, and the same, as approved by the court and entered of record, is in the words and figures following, to wit:

"E. K. GOODNOW
vs. } 9890.
JOHN STRYKER.

And now, on the application of John Stryker, it is certified by the court here, and ordered to be made part of the record herein, that $479 of the amount herein found and adjudged to be due from defendant to plaintiff was so found and adjudged as and for that amount paid by plaintiff's assignor as and for taxes for the year 1861 on the lands in the petition described; that said lands are part of the so-called Des Moines river lands granted by the United States to the State of Iowa by act of Congress of August 8th, 1846, entitled 'An act granting certain lands to the Territory of Iowa to aid in the improvement of
158 the navigation of the Des Moines river in said Territory,' the joint resolution of Congress of March 2d, 1861, entitled 'A joint resolution to quiet title to lands in the State of Iowa,' and the act of Congress of July 12th, 1862, entitled 'An act confirming a land claim in the State of Iowa, and for other purposes,' and that all of said lands are located above the Raccoon Forks of said Des

Moines river; that the validity of said taxes and the levy thereof for the year 1861 was drawn in question herein by the defendant Stryker on the ground, as maintained by him, that said lands were public lands of the United States, at least until March 2d, 1861; and, if so, were not, under the laws of Iowa, taxable until the year 1862; and this court decided herein that said lands were subject to taxation by the State of Iowa for the year 1861 and that said sum of $479 was recoverable of defendant by plaintiff because the same were so subject to taxation for that year.

And it is further certified and ordered to be made part of the record herein.

That by his answer and on the hearing in said cause the de-
159 fendant claimed immunity from the entire demand and claim of the plaintiff on the ground that, as he claimed, the same demand and claim had been adjudicated against plaintiff's assignor, the Dubuque & Sioux City Railroad Company, by the Supreme Court of the United States in the case of The Iowa Homestead Company against The Des Moines Navigation and Railroad Company, this defendant, and others, at the October term thereof, A. D. 1872, which case was, as defendant claimed and maintained in this court, prosecuted by said Dubuque & Sioux City Railroad, for its own use and benefit, in the name of said Iowa Homestead Company, and that plaintiff's assignor was therefore in such sence a party to said suit as to be bound and concluded herein by said adjudication therein, and that our decision herein was and is against the immunity so claimed by defendant.

(Signed) JAS. H. ROTHROCK,
Ch. Justice Supreme Court of Iowa."

159½ On the 16th day of April, 1884, there was filed in the office of the clerk of said court the writ of error in obedience to which this return is made, and on the 9th day of May, 1884, the citation was filed in the office of the clerk of said court, and said citation, with endorsement thereon of service upon defendant in error, and said writ, in their original form, are respectively attached hereto and numbered as pages 160 and 160, and are transmitted herewith as parts of the record herein.

160 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the supreme court of the State of Iowa, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said supreme court before you, between Edward K. Goodnow, plaintiff, & John Stryker, defendant, wherein was drawn in question the validity of the authority exercised under the State of Iowa, on the ground of its being repugnant to the laws of the United States, and the decision was in favor of the validity of such authority, and wherein certain rights, privelages, and immunities were claimed under a certain judgment of the Supreme Court of the United States and the authority exercised under

the United States, and the decision was against the rights, privelages, and immunities so claimed, a manifest error hath happened, to the great damage of the said John Stryker, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, the 16th day of April, in the year of our Lord one thousand eight hundred and eighty-four.

[Seal U. S. Circuit Court, Southern District Iowa.]

E. R. MASON,
Clerk of the Circuit Court of the United States,
Southern District Iowa.

Allowed by—
JAS. H. ROTHROCK,
Ch. J. Sup. Court of Iowa.

[Endorsed:] 9890. Goodnow, E. K., *vs.* Stryker, John. Writ of error. Filed Ap'l 16, 1884. G. B. Pray, clerk sup. court.

161 The United States of America to Edward K. Goodnow Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Iowa, wherein John Stryker is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James H. Rothrock, chief justice of the supreme court of the State of Iowa, this 10th day of April, in the year of our Lord one thousand eight hundred and eighty-four.

[Seal of the Supreme Court of Iowa.]

JAS. H. ROTHROCK,
Ch. J. Sup. Court of Iowa.

161½ Due service of the within citation is hereby accepted this 7th day of May, 1884.

GEORGE CRANE,
Att'y for Goodnow.

[Endorsed:] Supreme court of Iowa. E. K. Goodnow *vs.* John Stryker. 9890. Citation. Filed May 9, 1884. G. B. Pray, clerk sup. court.

162 On the 10th day of April, 1884, there was filed in the office of the clerk of said court a writ of error bond, duly approved, said bond, with endorsements thereon, being in the words and figures following, to wit:

"Know all men by these presents that we, John Stryker and James Callanan, are held and firmly bound unto Edward K. Goodnow in the full and just sum of one thousand dollars, well and truly to be paid to the said Edward K. Goodnow, his executors or administrators; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and dated this 14th day of March, 1884.

Whereas lately at a term of the supreme court of Iowa, in a suit depending in said court between Edward K. Goodnow, plaintiff, and John Stryker, defendant, judgment was rendered against the said John Stryker, defendant, and the said John Stryker
163 having obtained a writ of error and filed a copy thereof in the office of the clerk of said court to remove the judgment in the aforesaid suit, and a citation directed to said Edward K. Goodnow, admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of October next, now, the condition of the above obligation is such that if the said John Stryker shall prosecute said writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; otherwise in full force and virtue.

JOHN STRYKER,
By C. H. GATCH, *His Att'y.*
J. CALLANAN, *Security.*

Endorsed: "The within bond approved. April 10th, 1884. Jas. H. Rothrock, ch. justice sup. court of Iowa."

And the original bond is lodged in the clerk's office of the supreme court of Iowa.

164 STATE OF IOWA, *ss:*

I, G. B. Pray, clerk of the supreme court of Iowa, do hereby certify that the foregoing is a true and correct transcript of the record in the foregoing entitled cause, embracing the abstracts of both parties, the original opinion of said court, and its opinion on rehearing, together with the final entry of judgment and decree and supplemental decree or certificate directed and allowed upon motion of John Stryker, pl'ff in error, and copy of writ of error bond.

And I further certify that true copies of the writ of error and citation have been retained in my office, and the original citation